

Handbook for Alabama County Commissioners

Thirteenth Edition

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County government in Alabama has undergone a dramatic rebirth over the last two decades. For a large portion of Alabama's history, the primary function of the state's 67 county commissions was the construction, maintenance and supervision of our rural road system. As evidenced by the pages of this thirteenth edition of the Handbook for Alabama County Commissioners, counties now touch the lives of every citizen of Alabama in ways far beyond the oversight of its transportation system.

The handbook strives to be an overview of the responsibilities, challenges, limitations and relationships that influence the daily operation of the 67 county governments. For those fortunate enough to serve as a member of a county commission in Alabama, the essential role county government plays in our state's future has only increased the need for an accurate and timely resource document. The thirteenth edition of the handbook is just that resource.

This publication represents hours and hours of research on the legal responsibilities of county commissioners, the role county government plays in the quality of life in our state, and the decisions that must be made by county commission members on a weekly, if not daily, basis. Although the book is given to first-time county commissioners upon taking office, it also serves as a valuable resource guide for veteran commissioners, administrators, engineers, EMA directors, revenue officers, 9-1-1 directors and others who serve in county government in Alabama.

The pages of this newest edition reflect the expertise, insight and experience of the Alabama Law Institute and the Association's staff, along with former Association Counsel Mary E. Pons, who was responsible for an almost-complete revision of this handbook upon her retirement. This edition includes updates and additions since the publication of that version some four years ago.

On behalf of the Association, I also wish to express my gratitude to the acting director of the Alabama Law Institute, David Kimberley, who made the revision of this resource document one of his top priorities. We trust its contents will serve county government and its citizens well in the coming years.

Sonny Brasfield
Executive Director

PREFACE

The Alabama Law Institute is proud to continue its longstanding partnership with the Association of County Commissions of Alabama through the release of this most recent edition of the Handbook for Alabama County Commissioners. The Law Institute is charged by its enabling statute to assist in the training and education of public officials so that the laws of Alabama may be more uniformly implemented and followed. We believe this publication and our partnership with the Association of County Commissions of Alabama play an important role in fulfilling that charge.

This publication is the most recent in a line of publications to assist county commissions dating back to the 1963 publication of A Manual for Alabama County Commissioners, written by James D. Thomas. The manual was released by the Bureau of Public Administration of the University of Alabama. The second edition, published in 1975, and the third edition in 1979 were likewise written by Dr. Thomas and published by the Bureau of Public Administration. The fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh and twelfth editions all have been published by the Alabama Law Institute in conjunction with the Association of County Commissions of Alabama.

This thirteenth edition, entitled Handbook for Alabama County Commissioners, brings revisions current through the laws passed during the 2020 Regular Legislative Session.

We acknowledge the work done by previous editors and research editors as follows: fourth edition, Keith B. Norman, Assistant to the Director of the Alabama Law Institute, and James D. Thomas, Professor of Political Science and Center for Administrative Policy Studies with the assistance of Liz Levan, a law student at the University of Alabama; fifth edition, Mary Ellen Lamar, a research assistant to the Director of the Alabama Law Institute; sixth edition, Russell Standridge, law student at the University of Alabama; seventh edition, Ed Sanders, law student at the University of Alabama; eighth edition, Robert Selwyn, a University of Alabama law student; the ninth edition, Joseph Stutz, a law student at The University of Alabama; the tenth edition,

LaVeeda Morgan Battle, Assistant Director of the Alabama Law Institute; and the eleventh edition, Teresa Norman, Assistant Director of the Alabama Law Institute; and the twelfth edition, Mary Pons, retired association counsel for the Association of County Commissions of Alabama.

The Institute also wishes to express its appreciation to Sonny Brasfield, Executive Director of the Association of County Commissions of Alabama who also made valuable contributions to the revisions contained in this and prior editions. We also thank Jill Colburn Kjar, Michael Hill and law clerk Ben Seiss for their patient and meticulous final preparations of this manual for publication.

The primary purpose of this Handbook is to serve as a quick reference guide for county commissioners regarding the legal sources of the duties with which they are entrusted by law. For newly elected county commissioners, this Handbook can be an important tool in providing a general overview of the office and in helping to familiarize them with their many responsibilities. The Handbook is revised every four to six years. While the handbook is a good starting point, local county attorneys should be consulted on technical matters.

It should be emphasized that this publication is not an authoritative statement of the law, nor is it a substitute for the Code or other primary legal materials. This publication seeks to serve only as a general guide to the specific mandates of Alabama's laws regulating county commissioners. Users of this publication who have need of authoritative legal statements should seek such assistance from the appropriate legal sources.

The findings and conclusions of the study are those of the editors, who take sole responsibility for the accuracy of the study and for any interpretations of the data presented.

David A. Kimberley
Acting Deputy Director
Alabama Law Institute
November 2020

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CHAPTER I

HISTORY AND STRUCTURE OF COUNTY GOVERNMENT IN ALABAMA

A. HISTORY OF COUNTY GOVERNMENT

Throughout the country, counties are political subdivisions of state government. Historically, they descend from local government areas established in early England -- the English county and, beyond that, the Saxon shire in existence before the Norman Conquest of 1066. Counties were first established in the American colonies during the 17th century and were especially important units of local government in the southern colonies. The counties proved more acceptable to American tastes than some colonial local governmental units, such as parishes and hundreds, and after the separation from England, spread virtually throughout the country as it was developed and formed into states. There are 3,069 counties in the United States, and (considering Louisiana "parishes" and Alaskan "boroughs" as counties) they exist as functioning units of government in every state except Connecticut and Rhode Island.¹

The average number of counties in the states is around 60, but Delaware, for example, has only three counties, while Texas has 254, the largest number found in any state. Variations throughout the country in the physical and economic characteristics of counties, and in the structure and responsibilities of county government, are similarly broad.

¹ This overview of county government in the United States is partially based on Clyde F. Snider, *American State and Local Government* (New York: Appleton-Century-Crofts, 1965), Part V, "Local Organization and Powers;" and New County, U.S.A. Center, *National Association of Counties From America's Counties Today*, 1973 (Washington, D.C., 1973).

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Counties have traditionally been responsible for the local performance of such state functions as the administration of justice, law enforcement, road and bridge construction and maintenance, the recording of legal papers, property tax administration, programs for the poor, election administration, and education administration. They have also been authorized to engage in many other activities, including functions related to public health, agriculture, recreation, libraries, airports, and a broad array of public welfare programs. In some states, counties now provide services once considered wholly municipal in character, such as fire protection and public utility services, planning and zoning, and the provision of public housing facilities. The increased involvement with federal programs and sub-state regional units has added appreciably to the complexity of county government and administration of county services.

Forms of government established for the administration of county functions vary considerably from state to state and even within states, but despite these structural differences, the design of most county governments generally conforms to a broad pattern where both legislative and administrative powers are vested in an elected board or commission which, in a limited sense, functions as the county governing body. In addition to the governing body, there are typically found within the county a number of separate officers, boards, and other agencies administering various county functions. The county officers -- such as judges, sheriff, prosecuting attorney, coroner, and taxing official -- are nearly always independently elected, and the primary county commission normally has little power of supervision over the other boards and agencies conducting a part of the county's business. Thus, the county government usually consists of a central board that serves as a governing body and, in addition, a group of officers and other boards and agencies, each operating in an assigned functional area with some degree of independence from the central board's control.

B. HISTORY OF COUNTY GOVERNMENT IN ALABAMA

In Alabama, the first county (Washington) was created in 1800, some two years after the territory now forming the states of Alabama and Mississippi was organized into the Mississippi Territory. The territorial Legislature, first of the Mississippi Territory and after 1817 of the Alabama Territory, created additional counties as the area was settled. By the time Alabama entered the Union in December 1819, 29 counties had been organized. The state Legislature continued to establish new counties as the need arose, primarily in the 1830's and 1860's, so that the entire territory of the state was organized into 66 counties by the time the present Constitution was adopted in 1901. As authorized by *Ala. Const. § 39*, Houston County was created in 1903 from portions of Dale, Geneva, and Henry counties, and since then, the number of counties in Alabama has remained at 67. *Ala. Const. § 38* confirmed and ratified the county boundaries and *Ala. Const. § 39* provides for the creation of new counties under conditions set out in that provision. It seems unlikely this provision will have much application in the 21st century.

The governing body of the county in Alabama, as in other states, is an elected county board. This board developed in Alabama most directly from an administrative court established by law in 1821 shortly after Alabama's admission into the Union in 1819. The act of 1821 provided for the election in each county of four "commissioners of roads" positions to serve for terms of one year. Any two of the commissioners, together with the judge of the county court, constituted a court competent to levy the county tax; establish, maintain, and discontinue county roads; and exercise other powers in relation to roads, bridges, and ferries previously vested in other inferior judicial courts. With certain variations, including the change to four-year terms of office, this body has survived to the present time and remains the form of county government in place throughout the state.

Pursuant to *Ala. Code § 11-1-5*, the county governing bodies were uniformly designated as the "county commission" effective

October 1, 1970. Prior to that time there had been much variation in the state regarding the designation of the county governing body. The name most commonly used was “court of county commissioners”. Other designations included “board of revenue”, “county commission,” “board of directors,” and “board of finance and control”. Following passage of *Ala. Code § 11-1-5*, any reference to these other designations which may survive elsewhere in the law now means “the county commission”.

C. LEGAL STATUS AND GENERAL COUNTY COMMISSION AUTHORITY

Ala. Code § 11-1-2 establishes that “Every county is a body corporate, with power to sue and be sued in any court of record.” Counties are public corporations, but are distinguished from private corporations since they perform governmental functions. While counties are not classified as full municipal corporations (municipalities have their own separate set of statutes, responsibilities, and powers), they have been granted corporate status to enable them to carry out their governmental duties more effectively. Legally, counties are political subdivisions of the state created by statute to aid in the administration of state functions. Unfortunately, counties do not enjoy sovereign immunity from suit, which means that the county commission and its officials can sometimes be sued for actions of the body or individual county officials or employees.²

To understand county government in Alabama, it is important to understand that it is the ***governing body***, not the individual members of the county commission that performs governmental actions. The Supreme Court of Alabama has held as follows, “The county as a corporate entity, like any other corporation, may act only through its officers, the county's governing body, the county commission.” *Cook v. County of St. Clair*, 384 So. 2d 1 (Ala. 1980). This means that no one member of the body can make individual decisions affecting the county, particularly with regard

² See Chapter IV for discussion of the potential liability of the county and its officials and employees.

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to the expenditure of public funds, the creation or elimination of county programs, the hiring or firing of certain employees working under the direction of the commission, or the granting of permits or other approval under the county's regulatory authority. This also means that actions taken by the body, such as the approval and execution of a contract, will extend beyond the term of office of the members of the county commission actually taking action. The board is a continuously existing corporation even as its membership changes and, therefore, the body's contracts are the contracts of the board, and not of its members. *See e.g. Corning v. Patton*, 236 Ala. 354; 182 So. 39 (1938).

It is also important to understand that counties in Alabama operate under "Dillon's Rule", which means that "a unit of local government may exercise only those powers that the state expressly grants to it, the powers necessarily and fairly implied from that grant, and the powers that are indispensable to the existence of the unit of local government." *Black's Law Dictionary*. This principle means that unless the legislature grants county government specific authority, it cannot act. The Supreme Court of Alabama has noted that the county commission is statutory and of limited jurisdiction and that "its acts must be expressly authorized or necessarily implied". *See e.g. Corning v. Patton*, 236 Ala. 354; 182 So. 39 (1938). The powers and authority granted to counties come in various forms:

- Through constitutional provisions;
- Through the general laws of the state; and
- Through local laws enacted by the legislature for the benefit of only one county.

County government is by design "limited government", and Alabama's Constitution was purposely written to prohibit or restrict counties from the exercise of "home rule" powers such as

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taxation or land use regulation. Some examples of constitutional restrictions applicable to county government are as follows:³

- *Ala. Const. § 94, as amended by Amendment 112* prohibits counties from lending credit or granting a thing of value to private individuals and interests and, as such, preventing counties and other governmental entities from expending public monies or utilizing public equipment or time for private persons or purposes.
- *Ala. Const. § 224* prohibits counties from incurring debt in excess of the constitutionally-set limits for counties.
- *Ala. Const. § 68* prohibits the legislature or local governmental entities from increasing or decreasing the compensation of public officials during a term of office and prohibits granting additional compensation to employees after services have been rendered.
- *Ala. Const. Amendment 373* restricts counties from levying ad valorem taxes without the passage of a local legislative act and approval by public referendum.
- *Ala. Const. § 222* places restrictions on the county's authority to issue bonds.
- *Ala. Const. § 104* prohibits the passage of local laws on a host of issues enumerated in the constitutional provision.
- *Ala. Const. § 105* prohibits passage of a local law on a subject governed by general law.

Although it has limited powers, the county commission does operate as the “legislative body” of the county. The decisions it

³ Most of these restrictions are discussed in more detail later in this Handbook

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makes, generally through resolution rather than ordinance (as in the case of municipality), serve to some extent as the laws of the county and these decisions stand until and unless the county commission alters or repeals them through further act of the body.

Alabama's constitution and general law prescribe a variety of duties that the county commission must perform and grants discretionary authority to act in certain areas.⁴ As noted above, there are also many constitutional and statutory provisions and prohibitions affecting the role and actions of the county commission.⁵

Perhaps the most important duties of the county commission – which are discussed in more detail elsewhere in this handbook – are the duty to adopt and maintain the county budget (*Ala. Code § 11-8-3*)⁶ and the power and requirement to construct and maintain a safe county road and bridge system (*Ala. Code § 23-1-80*)⁷. Some of the general county commission powers and authority are enumerated in *Ala. Code § 11-3-11*. However, this Code section only addresses a small fraction of the functions of the county governing body and, in many respects, is a very outdated list of duties. Some of the powers listed in *Ala. Code § 11-3-11* that are still relevant are set out below:

- To direct, control and maintain the property of the county. *See also Ala. Code §§ 11-14-2 and 11-14-9.*
- To examine, settle and allow all accounts and claims chargeable against the county.

⁴ A comprehensive list of mandated duties is well beyond the scope of this handbook. However, a more detailed discussion of many of the duties assigned to the county commission under Alabama law can be found later in this chapter and in Chapter X.

⁵ Again, a comprehensive list of these restrictions and prohibitions would be impossible.

⁶ See Chapter VII.

⁷ See Chapter IX.

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- To examine and audit the accounts of all officers charged with the management, collection or disbursement of county monies or appropriations.
- To settle claims against the county where appropriate.
- To procure and provide telephones for the offices of the circuit clerk, the sheriff and jailer, the tax officials and judge of probate. *See also Ala. Code § 11-3-12.*
- To expend money for the purpose of improving the county's sanitary conditions.
- To appropriate money to promote or enforce the health and quarantine laws of the state for the benefit of the county and its inhabitants when requested to do so by the State Board of Health.
- To set aside, appropriate and use county funds or revenues and to enter into contracts for the purpose of developing, locating and promoting agricultural, industrial and manufacturing plants, factories and other industries in the county.
- To insure the property and buildings of the county against loss or liability for damages to persons and property.
- To provide county time and equipment or expend any monies necessary for the improvement, beautification, or decoration of any county school or schools under the control of the board of education in such county. *See also Ala. Code § 16-13-36.*

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- To exercise such other powers as are or may be given by law.

Many of these powers are provided for further in other sections of Alabama law.

In addition to the powers enumerated in *Ala. Code § 11-3-11*, there are many functions the county commission is mandated to perform under the general laws of the state. It would be impossible to provide complete list. However, some of these responsibilities are as follows:⁸

- Selecting a county depository meeting the requirements of Alabama law. *See e.g, Ala. Code § 11-4-40 et seq. and Ala. Code § 41-14A-1 et seq.*
- Granting host government approval of applications for new or expanding solid waste disposal facilities. *Ala. Code § 22-27-48.*
- Developing a local solid waste management plan. *Ala. Code § 22-27-47.*
- Creating and administering a local emergency management program. *Ala. Code § 31-9-10.*
- Establishing the annual levy of county property taxes when necessary. *Ala. Code § 40-7-42.*
- Establishing and altering election districts and polling places within the county as necessary and appropriate. *Ala. Code §§ 11-1-13, 11-1-14, 17-6-1 through 17-6-9.*

⁸ For further discussion of these and other county commission duties and functions, see Chapter X.

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- Establishing the hours of operation for the courthouse and other county offices and setting legal holidays for the county. *Ala. Code § 11-1-8.*
- Redistricting county commission lines as necessary. *Ala. Code § 11-3-1.1.*
- Providing for the housing and transportation of juveniles held in detention under certain circumstances. *See e.g. Ala. Code § 12-15-108.*
- Providing burial expenses for citizens who die in the county without any estate or family to provide for burial. *Ala. Code § 38-8-2.*
- Making appointments to a variety of boards, commissions, and public corporations when required or authorized by law to so do.

While the county commission is limited in its discretionary authority to take action for the benefit of the county, counties have been granted some authority and control over local issues. A few examples of important “decision-making” powers granted to counties under Alabama’s general laws are as follows:⁹

- To determine how county taxes are collected and distributed. *See Ala. Code § 11-3-11.1 et seq.*
- To levy a county tax for public school purposes. *Ala. Code § 40-12-4.*
- To abate certain county taxes for the benefit of new or expanding businesses locating within the county. *See e.g. Ala. Code § 40-9B-5.*

⁹ Many of these are discussed in more detail later in this Handbook.

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- To establish economic development authorities and industrial parks. *See e.g. Ala. Code §§ 11-20-1 et seq. and 11-23-1 et seq.*
- To expend monies and/or provide resources for economic development projects. *See e.g. Ala. Const. Amendment 772.*
- To regulate subdivision development in the unincorporated areas of the county and enforce subdivision regulations promulgated by the county. *Ala. Code § 11-24-1 et seq.*
- To regulate land use in flood prone areas, including both subdivision development regulation and planning and zoning. *Ala. Code 11-19-1 et seq.*
- To adopt airport zoning regulations in order to prevent airport hazards in an airport hazard area within its jurisdiction. *Ala. Code § 4-6-1 et seq.*
- To adopt building codes and abate building nuisances. *Ala. Code § 34-14A-12. See also Ala. Code § 41-9-166.*
- To license and regulate junkyards. *Ala. Code § 11-80-10.*
- To establish and administer solid waste programs which may include requiring mandatory participation in a solid waste collection program. *Ala. Code § 22-27-1 et seq.*
- To require notice of intent to utilize county roads and bridges for certain timber-related activities. *Ala. Code § 23-1-80.1.*

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- To provide services and expend monies for programs to aid the poor and under-privileged citizens in the county. *See e.g. Ala. Code § 38-8-1.*
- To enter into agreements granting cable franchises and to require licensing for same under limited circumstances. *See e.g. Ala. Code 11-27-1 et seq.*
- To establish a community corrections program. *Ala. Code § 15-18-170 et seq.*
- To establish work release programs for county inmates. *Ala. Code § 14-8-30.*

A major step toward granting counties broader discretionary authority to address certain health and safety concerns occurred in 2005, with the passage of The Alabama Limited Self Governance Act. *Ala. Code § 11-3A-1 et seq.* This law authorizes the county commission to establish programs to abate certain health and safety nuisances in the unincorporated areas of the county if application of the law is approved by voters in the unincorporated areas of the county at a referendum held in conjunction with a primary, general or special election called for another purpose. If the voters grant authority to adopt the provisions of this law in the county, the statute allows for the adoption of ordinances to abate the following nuisances:

- Weeds
- Junkyards
- Litter and rubbish
- Noise
- Pollution

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- Unsanitary sewage
- Animal control

The law sets out specific procedures for placing a referendum on a primary or general election ballot to grant the county commission authority to adopt such ordinances, and sets out specific procedures for adopting ordinances if county regulatory authority is approved by the voters in the unincorporated areas of the county. The law also addresses enforcement of ordinances once adopted. Additionally, the law sets out procedures for holding a referendum to repeal the county's grant of authority.

The Association of County Commissions of Alabama has developed model ordinances as a guide for counties considering the adoption of ordinances to address one or more of the nuisances enumerated in the law. The Association also has sample materials to promote passage of the referendum to grant a county the powers available in this law. Counties contemplating passage of such a referendum should contact the Association for assistance.

In addition to the mandated and discretionary county commission powers and duties addressed in Alabama's constitution and general laws, most counties have obtained some additional legislative or regulatory authority through the passage of local laws and/or local constitutional amendments. These typically authorize the county to levy a specific county tax, to create and operate local governmental or community programs, or establish some regulatory powers related to land use, business licensing, and/or the delivery of other services not addressed in the general law.¹⁰

D. COMPARISON WITH POWERS OF MUNICIPALITIES

There are stark differences between counties and municipalities (or municipal corporations) and the powers and authority of these two local governmental entities. A municipal corporation is an entity

¹⁰ For a more detailed discussion of local laws, see Chapter IV.

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created originally by the voluntary action of the citizens of a local community. As such, it has broad powers designed to enable the community to better serve its local needs. A county, on the other hand, is a political subdivision of the state created by statute to aid in the administration of state functions.

While municipalities are similarly situated to counties in that they can exercise only such power as conferred upon them by law (i.e., by act of the Legislature), municipal corporations have historically been granted much broader statutory authority than counties to exercise legislative and police powers at the local level. *Ala. Code § 11-40-1* provides that all municipal organizations shall be bodies politic and corporate. Additionally, they can sue and be sued, contract and be contracted with, and acquire property for any municipal purpose. However, Alabama law grants municipalities much greater local control than it does counties by authorizing the adoption of “all rules, regulations, resolutions and ordinances that may be required to carry out any or all of the applicable provisions of [municipal law]”. *Ala. Code § 11-40-3* states that no affirmative action is necessary for cities and towns to acquire the rights, power and authority granted under municipal law. On the other hand, as discussed above, counties must have specific statutory authority to carry out their governmental functions and in most instances, to implement enforcement tools for any regulatory authority they do have.

Under Alabama law, municipalities have specific “ordinance-making” authority to discharge the powers and duties conferred to them by law and to provide for the safety, health, prosperity, morals, order, comfort and convenience of the inhabitants of the municipality. *Ala. Code § 11-45-1*. Under *Ala. Code § 11-45-9*, municipalities can impose civil and criminal fines and penalties (including imprisonment) for violation of their ordinances. In addition to these enumerated powers, municipalities have been granted specific and broad authority for certain “home rule” issues, such as levying certain local taxes and land use regulation and control within their jurisdictional limits. As noted above, counties do not generally have these powers.

E. STRUCTURE OF THE COUNTY COMMISSION

1. Composition of the County Commission

Ala. Code § 11-3-1(c) states that, unless otherwise provided by local law or court order, the county commission shall be “composed of the judge of probate, who shall serve as chairman, and four commissioners, who shall be elected at the time prescribed by law and shall hold office for four years until their successors are elected and qualified.” Today, the make-up of the county commission in Alabama counties varies greatly around the state due to local legislation and/or court orders establishing a different structure than that prescribed by this general law. Although a five-member commission is the most common, commission membership ranges from as few as two commissioners with a countywide chair to as many as nine commission members. And in some counties, local laws or court orders address with some specificity how the commission is organized. For example, the Jefferson County Commission, which is composed of five members elected from districts, operates under a local law providing for a departmentalization of functions that is the primary characteristic of the commission form of government found in some municipalities. Each Jefferson County Commissioner thus serves as the head of a separate administrative department. Although this structure is not found anywhere else in Alabama, each county commission has its own specific organizational structure which impacts the delivery of services at the local level.

2. Qualifications to Serve as County Commissioner

Normally counties are divided into districts and a commissioner is elected for each district in the county. However, in a relatively small number of counties, commissioners are elected on a county-wide basis. *Ala. Code § 11-3-1(a)* does require that any person serving on the county commission be a qualified elector of the county having resided in the county for at least one year prior to the date upon which he or she would take office. In counties where the county commissioners represent a certain district, the person must have resided within the district which he or she seeks to represent for at least one year prior to the date that he or she

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would take office. This provision applies in all counties regardless of whether the commission make-up and structure was established by general law, local law, or court order.

Alabama law establishes other requirements (and restrictions) for all persons seeking or serving in public office. Most of these are set out in *Ala. Code §§ 36-2-1 through 36-2-10*. Of particular importance to counties are the following:

- The requirement to post bond as required in *Ala. Code § 36-2-1 et seq.* in order to receive his or her commission. *Ala. Code §§ 36-2-8 and 36-2-10*.¹¹
- The requirement to take and file the oath of office as set out in *Ala. Code § 36-4-1 et seq.* before performing any official duties. *Ala. Code § 36-2-10*.
- The requirement to obtain a commission before performing any official duties. *Ala. Code §§ 36-2-6 through 36-2-10*.
- The prohibition against holding any other public office while serving as an elected public official. *Ala. Code § 36-2-1(b)*. See also *Ala. Const.*, § 280.¹²

3. Selection and Role of County Commission Chair

Depending upon the law or court order applicable to the county, there are generally four methods for selecting the individual to serve as chair of the county commission:

1. The judge of probate serves as ex-officio chair;
2. The voters of the county elect the chair during a county-wide election;

¹¹ A more detailed discussion of procedures for obtaining official bonds is found in Chapter IV.

¹² See Chapter IV for further discussion of “office of profit”.

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3. The chair is established from within the membership of the commission; or
4. The chair rotates among the members of the commission.

As noted above, Alabama's general law provides that the judge of probate shall serve as ex-officio chair of the county commission unless otherwise provided by local law or court order. There are now only 13 counties in which the judge of probate serves as chair. Some 16 county commissions are chaired by a person selected by countywide vote. In most cases this person is required to hold such position on a "full time" basis. In the remaining counties, just more than half of Alabama's 67 counties, the functions of chair of the commission are carried out by a member of the commission who has been elected by the voters to serve as a member of the commission body. In most counties which use this system, the duties of chair are "rotated" among the commissioners – allowing all commissioners to serve as chair during their term on the commission. The duties of chair in other counties fall on a member of the body who is elected by the body and who serves either for a set term of office or at the pleasure of the body.

Ala. Code § 11-3-20 provides that the judge of probate or county-wide elected chair of the county commission shall only vote on a matter before the county commission in the event the other members of the commission are evenly divided on the issue. "When the chair serves on the county commission as a district commissioner, he or she may vote once on all matters that come before the county commission." *Ala. Code § 11-3-20*. This section also authorizes, but does not require, the county commission to elect or to authorize the chair to appoint a vice chair to serve in the absence of the chair.

The general duties of the chair are enumerated in *Ala. Code § 11-3-20*, and include the following:

- Keeping an accurate record of meetings;

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- Serving as signatory on county documents;
- Overseeing and supervising the financial records of the county;
- Issuing and signing all warrants; and
- Performing other duties “required by law or determined appropriate by the county commission pursuant to resolution duly adopted by a majority of the members of the county commission.”

As noted above, *Ala. Code 11-3-20* allows the county commission to grant other duties to the chair and some counties have local laws that govern the role of the commission chair and/or prescribe certain duties to the chair. As a result, the actual duties of the county commission chair vary to some extent by county.

As discussed in Chapter II, the county commission is required under the Open Meetings Law to establish rules and procedures for all meetings. *Ala. Code § 36-25A-5*. The rules adopted by the county commission usually provide for the powers and responsibilities of the chair during regular, special, or emergency meetings.

Once the county commission votes to approve or enter into a contract, the county commission chair is responsible for executing any necessary documents to implement the action taken by the county commission. *See Ala. Code § 11-3-20*. It is not within the discretion of the chair to fail to carry out the will of the county commission when he or she does not agree with or approve the action taken by the county commission. *See e.g. AG’s Opinion # 2001-049*. The chair, however, is not required to take action which would be illegal or unconstitutional. *See AG’s Opinion # 2004-208*.

Many of these functions are now actually carried out by the chief administrative officer of the county under the direction of the chair. *See Ala. Code § 11-3-18* regarding the chief administrative officer.¹³

4. Term of Office

Generally, county commissioners serve for a term of four years as prescribed in *Ala. Code § 11-3-1(c)*. However, that Code section allows for local laws to change the term of office. Thus, a couple of counties now have terms of six years pursuant to local law. The terms of office for county commissioners are staggered in about half of the counties.

County commissioners, unlike other state and county office holders, take office very soon after the general election. In fact, pursuant to *Ala. Code § 11-3-1(d)*, a county commissioner's term of office begins at 12:00 a.m. on the second Wednesday following the general election at which he or she is elected and ends at 11:59 p.m. on the first Tuesday following the day of the general election at which a successor is elected. Pursuant to *Ala. Code § 11-3-1(f)*, this requirement cannot be altered by local law.

Ala. Code § 11-3-1(d) does not affect the term of office for the judge of probate even if he or she is serving as chair of the commission. Pursuant to *Ala. Code § 12-13-30*, the judge of probate takes office on the first Monday after the second Tuesday in January following his or her election and serves a six year term.

Ala. Code § 11-3-1(e) requires the new commission to hold an organizational meeting on the day any members of the commission take office and prohibits the commission from meeting at any time between the general election and this required organizational meeting unless the commission unanimously declares an emergency situation. Under this provision, if the county commission would normally meet at some other time during the week in which the organizational meeting must take place, that

¹³ See Chapter X for further discussion of the chief administrative officer.

meeting will not be held and the organizational meeting will also serve as the commission's regular meeting. Among other business the body may conduct at this meeting, *Ala. Code § 11-3-1* requires the body to establish its regular meeting days during the organizational meeting. See, also, *Ala. Code § 11-3-8* regarding setting meetings and providing notice of those meetings.¹⁴

5. Reapportionment of County Commission Districts

Ala. Code § 11-3-1.1 authorizes the county commission to alter the district boundaries of the county commission after the release of the federal decennial census. This provision of law only applies to counties with single-member districts, but applies whether or not districts are established by state or local law or by court order. Pursuant to *Ala. Code § 11-3-1.1(b)*, the redistricting plan must be approved not later than 180 days prior to the primary election in which it will first be used.

There is no statutory requirement that the county redistrict after each census, but the county may be subject to court challenge if there have been significant changes in the demographic make-up of the county or certain districts within the county. The attorney general's office has held that redistricting can only occur once after each federal decennial census. *AG's Opinion # 2009-001*. There are several resources available to assist counties in developing a redistricting plan that satisfies federal requirements.

The law sets out specific requirements for advertising new proposed district boundaries, which include providing notice of the date, time, and location of the meeting at which the plan will be considered. For approval, the change in district lines must be adopted by resolution of the county commission which shall describe the new lines by reference to standard census units, county voting precincts, or both. A certified copy of the resolution approving the redistricting plan and a map showing revised district lines shall be filed with the judge of probate.

¹⁴ See Chapter II for further discussion of setting meetings and providing notice of such meetings in compliance with the Open Meetings Law.

6. Removal from Office

The office of any public official convicted of a felony is vacated from the time of the conviction. *Ala. Code § 36-9-2*. The official is restored to office if the conviction is reversed or if a new trial is granted. However, the official is not restored to office if granted a pardon.

The only other circumstance where a public official is removed from office is impeachment or in the case of judges (such as the judge of probate), by the Judicial Inquiry Commission. *Ala. Const. §§ 173 and 175* provide that a county commissioner can be impeached for willful neglect of duty, corruption in office, incompetency, or intemperance to such an extent “as unfits the officer for the discharge of such duties” or for any offense involving moral turpitude while in office. The process for impeachment, set out in *Ala. Code § 36-11-1 et seq.*, is cumbersome and not often utilized in general practice.

7. Vacancies on the County Commission

Vacancies in office are created by death, resignation, an official ceasing to be a resident of the county, or a court order declaring the election or appointment void. *Ala. Code § 36-9-1*. A felony conviction will also create a vacancy in office. *Ala. Code § 36-9-2*.

The procedure for filling a vacancy on the county commission is governed by *Ala. Code § 11-3-1(b)*, which provides that unless a local law authorizes a special election, the vacancy shall be filled by appointment of the Governor. Any person appointed to fill a vacancy on the county commission must at all times meet the residency requirements set out in *Ala. Code § 11-3-1(a)*.

In order to prevent a person from being appointed to serve the majority of a county commission term of office without having been elected to the office, *Ala. Code § 11-3-1(b)* provides that the person appointed to fill a vacancy shall only serve through the next general election unless the appointment occurs at least 30 days before the closing of party qualifying for the next election. Under

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this process, an election to fill the remainder of the term will be held during that next general election. In other words, a person appointed to fill a vacancy during the first two years of a term will be subject to an election for the final two years of that term. After such time, the position will return to its normal four year election cycle. A person appointed during the second half of a commissioner term of office will serve the remainder of the term of office.

Ala. Code § 36-8-2 provides that a public official who volunteers for or is called into active military service when there is an existing state of war or military conflict does not vacate his or her office. *Ala. Code § 36-8-3* allows for the governor to make a temporary appointment to fill a vacancy created by a county commissioner (or other official) being called into active service. Any official serving in active military service will resume their tenure in office thirty days after notifying the appointing authority of their intent to return to office. However, this provision only applies where the term has not expired. *Ala. Code §§ 36-8-3 and 36-8-4.*

CHAPTER II

THE COUNTY COMMISSION MEETING AND ALABAMA'S OPEN MEETINGS LAW

A. MEETINGS UNDER OPEN MEETINGS LAW

1. What is a Meeting?

Like most governmental bodies in Alabama, the county commission is required to conduct all meetings in compliance with Alabama's Open Meetings Law, found at *Ala. Code § 36-25A-1 et seq.* This includes not only meetings of the "full" county commission, but meetings of any "standing, special, or advisory committees or subcommittees of, or appointed by, the body". See the definition of "governmental body" in *Ala. Code § 36-25A-2(a)(4)*.

Under the definition of "meeting" set out in *Ala. Code § 36-25A-2(6)*, there are four separate circumstances which constitute a meeting:

1. A pre-arranged gathering of a quorum of the body required by law;
2. A pre-arranged gathering of a quorum of the body where the body is authorized by law to exercise its powers;
3. Any other gathering of a quorum of the body, whether or not it was pre-arranged, where the body will deliberate on specific matters that, at the time of the exchange, the participating members expect to come before the full governmental body at a later date; or
4. A gathering of a quorum of a committee or subcommittee of the body, whether or not it was prearranged, where the members will deliberate specific matters that, at the time of the exchange, the

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participating members expect to come before the full governmental body, committee, or subcommittee at a later date.

Once any one of these conditions is met and the existence of a meeting is established, the county commission, or any committee or subcommittee created by the commission, is required to comply with the provisions of the Open Meetings Law, including providing proper notice as required in *Ala. Code § 11-3-8*. See *Ala. Code § 36-25A-3(d)*.

2. What is Not a Meeting?

In addition to setting out what constitutes a meeting under the Open Meetings Law, *Ala. Code § 36-25A-2(6)(b)* specifically provides that a meeting is *not* any of the following:

- Social or other gatherings attended by a quorum of the body provided the members do not deliberate on matters the members believe the body will act on later.
- Conventions, conferences, media events, and trainings attended by a quorum of the body provided the members do not deliberate on matters the members believe the body will act on later.
- Gatherings for on-site inspections or meeting with applicants for economic incentives or assistance as long as there is no deliberation.
- Gatherings of a quorum to meet with state or federal officials, such as legislators and state agency heads.
- Gatherings to discuss economic, industrial, or commercial prospects or incentives that do not include conclusions or final action.
- Gatherings of less than a quorum.

3. What is a “Serial Meeting”?

The Open Meetings Law was amended in 2015 to specifically prohibit the use of “serial meetings” to circumvent the law. *See Ala. Code § 36-25A-1*. “Serial meetings” are defined in *Ala. Code § 36-25A-2(13)a* as a series of gatherings of two or more members of a governmental body where ***all*** of the following apply:

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

“Gatherings” are not considered serial meetings if any of the following apply:

- There is no deliberation, or
- The sole purpose of the gathering was to exchange background and education information with members on specific issues, or

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- The gatherings are related to a search to fill a position for persons required to file a Statement of Economic Interests until the search has been narrowed to three or fewer persons under consideration, or
- The gatherings only involve a single member of a governmental body.

4. What is a “Quorum”?

The definitions of what is and is not meetings under the law make clear that, except for “serial meetings”, meetings only occur when a quorum of the body is involved. *Ala. Code § 36-25A-2(12)*, in pertinent part, defines a “quorum” as “a majority of the voting members of a governmental body” unless otherwise provided by law. For the county commission, this will include the judge of probate or county-wide elected chair serving as the presiding officer.

The definition of quorum in *Ala. Code § 36-25A-2(12)* includes persons who have been elected or appointed to public positions but have not yet taken office. This is intended to prevent “new” members of a governmental body from meeting informally with other members before actually taking office. County commissions are exempted from this requirement because *Ala. Code § 11-3-1(e)* prohibits a county commission from holding a meeting between the date of the election of members and the date commissioners take office on the following Wednesday except in case of an emergency.¹

Other public bodies associated with county government are not exempt from this provision. For example, this provision would mean that persons who have been elected to the local school board but have not yet taken office cannot “deliberate” with other members of the body or others who have been elected to the school board without triggering the provisions of the Open Meetings Law.

¹ See further discussion of this issue in the “Term of Office” section in Chapter I.

5. What is Deliberation?

The definitions related to what constitutes a “meeting” for purposes of the Open Meetings Law make clear that the issue of “deliberation” is at the heart of determining when a “meeting” governed by the law is taking place. The definition of “deliberation” for purposes of the law is found in *Ala. Code § 36-25A-2(1)*:

“An exchange of information or ideas among a quorum of members of a subcommittee, committee, or full governmental body intended to arrive at or influence a decision as to how any members of the subcommittee, committee, or full governmental body should vote on a specific matter that, at the time of the exchange, the participating members expect to come before the subcommittee, committee, or full body immediately following the discussion or at a later time.”

Deliberation does **not** include every conversation between members of the county commission regarding an issue which may or may not come before the body. Deliberation takes place when a number of members of the body constituting a quorum exchange information on how they intend to vote on a specific matter, and/or the appropriate action to take on a specific issue that is expected to come before the body. Therefore, officials should be careful in their communication to ensure that, when a quorum is present, they do not “exchange” information about how they intend to vote or that they do not “exchange” information intended to influence how another member of the body will vote.

B. COUNTY COMMISSION NOTICE REQUIREMENTS

Ala. Code § 36-25A-3 outlines detailed notice requirements for meetings of governmental bodies. The Open Meetings Law provides that these notice procedures do not apply to the county

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commission or any committee of the commission, provided the county commission follows the requirements of *Ala. Code § 11-3-8*. See, *Ala. Code § 36-25A-3(d)*. *Ala. Code § 11-3-8* (and *Ala. Code § 11-3-1*) provide the statutory notice requirements for meetings of the county commission.²

Ala. Code § 11-3-8 requires each county commission to establish its regular meeting dates during the first meeting in November following the election of any of the members of the commission.³ This regular meeting date, time and location must be posted in the courthouse and members of the news media who have filed a written request must be advised of the regular meeting dates when it is established. It is not necessary, however, to contact members of the media in advance of each meeting once the regular date has been established and the media has been notified.

Ala. Code § 11-3-8 provides that when the regular meeting date falls on a holiday, the county commission may meet “on any day” of that week or on another date or time established by the commission. This substitute meeting date must be posted in the courthouse at least five days before the meeting and any media who have filed a written request for notice of meetings must be notified of the change.

Ala. Code § 11-3-8 also provides that special meetings of the commission can be called with five days notice upon written request of a majority of the members of the county commission. The time, date and location of the special meeting along with the “purpose for and agenda of the meeting” must be posted in the courthouse at least five days before the meeting and provided to the media. Items that are not listed on the “purpose for and agenda of the meeting” may not be considered during the special meeting.

The county commission chair may call an emergency meeting of the commission without the five day notice. The meeting time, date and location shall be posted in the courthouse and the media

² See Chapter I for further discussion of setting county commission meetings.

³ This provision is discussed in more detail in Chapter I.

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notified once the meeting is set. As in the case of special meetings, the purpose for and agenda of the meeting shall be included in all public notices of the meeting and no other items shall be considered at the emergency meeting.

C. CONDUCTING A COUNTY COMMISSION MEETING

1. County Commission Rules Of Procedure and Record Keeping

The Open Meetings Law requires each governmental body to adopt rules of procedure for its meetings, and that all meetings be conducted pursuant to those adopted rules. *Ala. Code § 36-25A-5*. The law does not prescribe what rules must be adopted, but it is important that each county commission establish rules of procedure and follow its adopted rules. Failure to establish rules of procedure and failure to follow the adopted rules are violations of the law which can result in payment of fines and voiding of actions taken by the commission. The rules of procedure adopted by a county commission will remain in place and operative until and unless amended by the body. The Association of County Commissions of Alabama has developed a model set of meeting rules of procedure for counties, which can be downloaded from the Association's website.

Ala. Code § 36-25A-4 requires that the governmental body maintain accurate records of its meetings, excluding executive sessions. The records shall include the date, time, place, members present or absent, and action taken at each meeting. It is important to keep in mind that, pursuant to *Ala. Code § 36-25A-4*, these records become public record after approval by the body and must be made available to the public as soon as practicable *after* that approval.

Ala. Code § 36-25A-6 provides that, except while in executive session, a meeting of a governmental body may be openly recorded by any person in attendance by means of a tape recorder or any other means of sonic, photographic, or video reproduction provided the recording does not disrupt the conduct of the meeting.

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The governmental body may adopt reasonable rules for the implementation of this section. The Association of County Commissions of Alabama has developed a model policy for allowing recording of meetings, which is available for download from the Association's website.

2. Voting in a County Commission Meeting

Ala. Code § 36-25A-5 authorizes voice votes on matters that come before a governmental body, unless otherwise prohibited by law. This Code section covers most votes taken in a county commission meeting. However, *Ala. Code § 36-25A-7* requires a recorded vote on a motion to convene an executive session. *Ala. Code § 36-25A-5* specifically prohibits voting by secret ballots or voting in an executive session unless otherwise allowed by law.

3. Executive Sessions under the Open Meetings Law

The Open Meetings Law defines an "executive session" as "That portion of a meeting of a subcommittee, committee, or full governmental body from which the public is excluded for one or more of the reasons prescribed in [Ala. Code § 36-25A-7(a)]". *Ala. Code § 36-25A-7* sets out the proper grounds for convening an executive session, the procedures for convening the executive session, and how the session should be conducted.

The decision to convene an executive session can only be made while a quorum of the body is in session at a meeting where it is authorized by law to take official action. *Ala. Code § 36-25A-7(b)(1)*. Once a quorum is present for conducting business, a motion to convene an executive session setting out with specificity the grounds for calling the session must be made, seconded, and approved by recorded vote of the body. *Ala. Code § 36-25A-7(b)(2)*. *Ala. Code § 36-25A-7(3)* requires a recorded vote on the motion to convene the session. Additionally, *Ala. Code § 36-25A-7(b)(4)* requires that prior to calling the executive session to order, the chairperson shall state on the record whether the governmental body will reconvene after the executive session and, if so, the approximate time the body expects to reconvene.

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While a governmental body is never required to convene an executive session, there are nine permissible grounds for convening such sessions set out in *Ala. Code § 36-25A-7*, each written very narrowly to only allow for certain discussions to be held in the private meeting and only under particular circumstances set out in the law. A detailed discussion of each circumstance when an executive session can be held is beyond the scope of this handbook, but failure to follow the procedures set out in the law and convening or utilizing an executive session for discussions – or deliberation – not authorized in *Ala. Code § 36-25A-7* are violations of the law which can result in payment of fines and voiding of actions taken by the commission. County commissioners should always consult with the county attorney before considering convening such sessions.

Under *Ala. Code § 36-25A-7*, the governmental body may convene an executive session for the following reasons:

- 1. General Reputation and Character**

To discuss the general reputation and character, physical condition, professional competence, or mental health of individuals or, subject to limitations set out in the law, to discuss the job performance of certain public employees.

- 2. Statutorily Authorized Disciplinary Proceedings**

To consider the discipline or dismissal of, or to hear formal written complaints or charges brought against a public employee, a student at a public school or college, or an individual, corporation, partnership, or other legal entity subject to regulation by the governmental body when expressly allowed by federal law or state law.

- 3. Pending or Threatened Litigation**

To discuss with their attorney the legal ramifications of and legal options for pending litigation, controversies imminently likely to be litigated or imminently likely to be litigated if the governmental body pursues a

proposed course of action, or to meet or confer with a mediator or arbitrator regarding litigation or decisions concerning matters within the jurisdiction of the governmental body involving another party, group, or body.

4. Security Plans

To discuss security plans, procedures, assessments, measures, or systems, or the security or safety of persons, structures, facilities, or other infrastructures where public disclosure could reasonably be expected to be detrimental to public safety or welfare.

5. Criminal Investigations or Revealing Undercover Agents

To discuss information that would disclose the identity of an undercover law enforcement agent or informer or to discuss the criminal investigation of a person who is not a public official in which allegations or charges of specific criminal misconduct have been made or to discuss whether or not to file a criminal complaint.

6. Purchase Price of Property

To discuss the consideration the governmental body is willing to offer or accept when considering the purchase, sale, exchange, lease, or market value of real property except where any member of the body has a personal interest in the transaction and attends or participates in the executive session or where a condemnation action has been filed to acquire the real property involved in the discussion.

7. Matters of Commerce or Trade

To discuss preliminary negotiations involving matters of trade or commerce in which the governmental body is in competition with private individuals or entities or other governmental bodies or to discuss matters or

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information of the character defined or described in the Alabama Trade Secrets Act.

8. Public Employee Negotiation Strategy

To discuss strategy in preparation for negotiations between the governmental body and a group of public employees.

9. Administrative Hearings with Record

To deliberate and discuss evidence or testimony presented during a public or contested case hearing and vote upon the outcome of the proceeding or hearing if the governmental body is acting in the capacity of a quasi-judicial body, and either votes upon its decision in an open meeting or issues a written decision which may be appealed to a hearing officer, an administrative board, court, or other body which has the authority to conduct a hearing or appeal of the matter which is open to the public.

There are four circumstances under which the law sets out a special requirement that the governmental body be advised, ***prior to convening the executive session***, that the executive session is necessary and/or proper to protect confidential information. This advice must be provided in writing or by an oral declaration made on the record and included in the minutes of the meeting. The Association of County Commissions of Alabama has sample letters that can be used for these purposes available for download on their website. The circumstances and specific requirements are as follows:

Pending or Threatened Litigation

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

Criminal Investigations or Revealing Undercover Agents

The governmental body must be advised by a law enforcement officer, a district or assistant district attorney, or the attorney general or an assistant attorney general that the discussion would “imperil effective law enforcement” if disclosed outside of an executive session.

Matters of Commerce or Trade

The governmental body must be advised that, if not held in executive session, the discussions would have a detrimental effect upon the competitive position of a party to the negotiations or the location, retention, expansion, or upgrading of a public employee or business entity in the area *or* would disclose information protected by the Alabama Trade Secrets Act. This advice must be provided by a person who is involved in the recruitment or retention effort or who has personal knowledge that the discussion will involve information protected by the Alabama Trade Secrets Act.

Public Employee Negotiation Strategy

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

With the one limited exception related to administrative hearings, no deliberation and no votes can take place during the executive session. The executive session is for discussion and information-gathering purposes *only*, and must be concluded before the body begins to deliberate or make decisions about its course of action. Since decisions cannot be made during an executive session, this means that when the body is ready to vote – or ready to debate how it should vote – the executive session must come to an end.

D. ENFORCEMENT OF THE OPEN MEETINGS LAW

A lawsuit for violation of the Open Meetings Law can be filed in the circuit court of the county where the governmental body is located by the attorney general, the district attorney, any media organization, or “any Alabama citizen impacted by the alleged violation to an extent greater than the impact on the public at large”. *Ala. Code § 36-25A-9(a)*. No member of a governmental body may bring action against other members of the body on which he or she serves.

The party or parties bringing the suit against members of a governmental body may seek any of the following remedies:

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

The lawsuit shall be brought against “all members of the governmental body remaining in attendance at the alleged meeting held in violation of [the law]”. *Ala. Code § 36-25A-9(a)*. The lawsuit is brought against the members in their official capacity. There is no provision in the law for bringing action against employees or other participants in a meeting that allegedly violates the law.

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The complaint filed must state with specificity the grounds for bringing suit. And where the action is filed by an Alabama citizen, the complaint must state specifically how the person bringing suit is or will be impacted by the alleged violation to an extent greater than the general public. *See Ala. Code § 36-25A-9(a)*.

There are four possible grounds for bringing suit:

1. The defendants disregarded the requirements for proper notice of the meeting;
2. The defendants disregarded the provisions of the law during a meeting, other than during an executive session;
3. The defendants voted to go into executive session and while in executive session discussed matters other than those subjects included in the motion to convene; or
4. Other than one of the claims set out above, the defendants intentionally violated other provisions of the law.

Under *Ala. Code § 36-25A-9*, the lawsuit is intended to move quickly through the judicial process. Pursuant to *Ala. Code § 36-25A-9(a)*, the defendants (the members of the governmental body sued) are required to file their initial response within seven business days of personal service of the lawsuit and a preliminary hearing must be held no later than 10 business days after the defendants' initial response. If no initial response is filed, the preliminary hearing must be held no later than 17 business days after the lawsuit is filed.

The purpose of the preliminary hearing is for the plaintiff to convince the court that there is enough evidence to proceed with a trial on the allegations made in the lawsuit. If the court finds that the plaintiff has met its initial burden of proof at the preliminary hearing, it shall establish a schedule for discovery and set the

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matter for a hearing on the merits. Unless a longer period is agreed to by the parties and the court, a final order on the merits of the case must be issued by the court within 60 days after the preliminary hearing. Under *Ala. Code § 36-25A-9(g)*, the final order against a defendant must state specifically upon which claim the ruling is based.

Ala. Code § 36-25A-9(g) sets out monetary penalties to be paid where the court determines that there has been a violation of the Open Meetings Law. Under the law, each member of the governmental body found to have violated the law can be assessed a penalty of up to \$1000 or one-half of his or her monthly salary for service on the body, whichever is less. There is a minimum penalty of one (\$1.00) dollar. Fines can be assessed for each separate violation of the law. The penalties assessed are paid to the plaintiff(s).

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

Ala. Code § 36-25A-9(h) states that a governmental body may pay or provide for payment of the legal expenses of present or former members of the body named as defendants in a lawsuit filed for violation of the law. However, there is no provision requiring the members of the governmental body to pay the attorney's fees of the person or entity filing suit alleging violation of the law. There is also no provision allowing the governmental body or the members sued to be reimbursed their legal fees from the plaintiff in the event the Court finds that there was no violation of the law.

Ala. Code § 36-25A-9(f) provides that, in addition to monetary penalties, the court may invalidate any action taken during a meeting held in violation of the law if the following occur:

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- The lawsuit is filed within 21 days of the date when the action is made public;
- The violation was not the result of mistake, inadvertence, or excusable neglect; ***and***
- Invalidating the action taken will not unduly prejudice third parties who have acted in good faith reliance upon the challenged action of the governmental body.

The court, however, cannot invalidate any action taken at an open meeting conducted in a manner consistent with the law because of a violation which occurred prior to the meeting.

E. PROTECTIONS UNDER THE OPEN MEETINGS LAW

The Open Meetings Law provides limited immunity protection to public officials and employees for statements made during a meeting conducted in compliance with the law. *Ala. Code § 36-25A-8* states that:

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

This means that a person cannot sue any member of the governmental body or any governmental employee for statements made during a meeting of the body if those statements are made during a matter pending before the body. However, this immunity protection only applies to statements made during a meeting which relate to a matter pending before the governmental body at the time the statement is made.

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Ala. Code § 36-25A-11 states that a lawsuit alleging a violation of the law must be brought within sixty (60) days of the date that the person or entity bringing suit knew or should have known of the activity which is believed to have been a violation of the law. Additionally, the law provides that the lawsuit must be filed no later than within two years of the alleged violation.

Ala. Code § 36-25A-9(g) provides that all causes of action based on or arising out of the same alleged violation or violations of the Open Meetings Law must be consolidated into one action. This provision allows for consolidating actions where necessary and allows parties to intervene in an ongoing action, but states specifically that no member of a governmental body found to have violated the law “shall be subject to further liability or penalty to the same or different plaintiffs in separate causes of action for the same violation or violations”.

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CHAPTER III

COMPENSATION, EXPENSES, AND BENEFITS OF COUNTY OFFICIALS

A. COMPENSATION FOR CURRENT AND FORMER COUNTY OFFICIALS

Elected officials in Alabama are only entitled to compensation and expenses as authorized by general or local law. While there is general law setting compensation or fees for most elected officials, local laws can alter compensation and/or expenses paid to officials. In many counties, local elected officials receive additional or different compensation and/or expense allowances pursuant to local laws applicable in those counties.

The compensation and expenses of most local elected or appointed officials are generally paid out of the county general fund, although in some instances the county receives reimbursement from other sources for some or all of the monies paid for compensation and expenses. In particular, compensation for tax officials is paid from ad valorem taxes collected with most entities receiving a portion of the proceeds paying a pro rata share of the officials' compensation. *See Ala. Code § 40-6A-2.*

In addition to payment of compensation for local elected officials, some counties have local laws that require the county commission to pay supplemental compensation for certain state officials out of the general funds of the county.¹ The county also pays fees and compensation to the absentee election manager and judge of probate for certain election activities.²

¹ Counties used to pay a supplement for circuit and district judges, but these have been phased out pursuant to *Ala. Code § 12-10A-2*.

² See Chapter VI for a more detailed discussion of election activities and expenses.

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Unless otherwise provided by local law applicable to a county, the compensation for county commissioners, judges of probate, sheriffs, and local tax officials is governed by the so-called “Omnibus Pay Act”, found at *Ala. Code § 11-2A-1 et seq.* and discussed in detail below. Other local officials are paid pursuant other general laws (discussed below as well).

1. Omnibus Pay Act

In an effort to move toward some consistency in compensation paid to certain local elected officials, and to allow for modest increases in compensation when the county has adequate revenues to fund such increases, the Alabama Legislature enacted what has come to be known as the “Omnibus Pay Act” in 1999. *Ala. Code § 11-2A-1 et seq.* This law, which initially took effect on October 1, 2000, applies to compensation for county commissioners, sheriffs, tax officials, and judges of probate. The law does not apply to coroners, constables, or any elected official created by local law or local constitutional amendment.

The Omnibus Pay Act did not repeal or amend existing provisions of law setting minimum compensation for the elected officials covered under the law, but did provide for initial and future increases in the minimum amounts set by law. The general statutes setting minimum compensation for local elected officials are as follows:

1. Minimum compensation for county commissioners (including the chair) is found in *Ala. Code § 11-3-4.1*. See also *Ala. Code § 11-3-4* regarding reimbursement of expenses.
2. Minimum compensation for sheriffs is set at \$35,000 in *Ala. Code § 36-22-16*, but as set out below has been increased to \$50,000 pursuant to *Ala. Code § 11-2A-2(1)*.³

³ *Ala. Code § 36-22-16*, while not repealed, no longer has any practical application.

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3. Minimum compensation for local tax officials, which is based upon county population, is found in *Ala. Code § 40-6A-2*. Under § 40-6A-2, local tax officials include “tax assessors, tax collectors, revenue commissioners, license commissioners, or other officials whose primary duty is assessing and/or collecting ad valorem taxes in the various counties of this state”.
4. Minimum compensation for judges of probate is found in *Ala. Code § 12-13-20*.

Under the Omnibus Pay Act, on October 1, 2000, most county commissioners and judges of probate received small percentage increases to the minimum compensation set by general law in amounts determined by the following population-based categories:

CATEGORY 1. Population in excess of 450,000: salary set by local law.

CATEGORY 2. Population from 350,001 to 449,999: salary set by local law.

CATEGORY 3. Population from 200,001 to 350,000: 20 percent.

CATEGORY 4. Population from 50,001 to 200,000: 20 percent.

CATEGORY 5. Population from 19,000 to 50,000: 17 percent.

CATEGORY 6. Population of less than 19,000: 15 percent.

See Ala. Code §§ 11-2A-1 and 11-2A-2. Additionally, the law increased the minimum compensation for sheriffs to \$50,000 and allowed the county commission to provide tax officials with an expense allowance of up to \$10,000 to be paid in addition to their existing compensation. These increases generally took effect on October 1, 2000.

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Except for any expense allowance granted to tax officials by the county commission, the initial increases granted effective October 1, 2000 were not available to any officials already receiving compensation at that time in excess of the minimum compensation prescribed by law plus the amount provided in *Ala. Code § 11-2A-2* on September 30, 2000. *Ala. Code § 11-2A-6*. Additionally, some counties were required to “opt in” for the increases or other provisions of the law to apply to the officials in those counties. *Ala. Code § 11-2A-7*.⁴

In addition to the initial increases granted pursuant to *Ala. Code § 11-2A-2*, beginning October 1, 2000, all full-time county commission chairpersons in counties with a population of 200,000 or less receive an additional \$5,000 annually and any judge of probate in a county of 200,000 or less serving as county commission chair receives an additional \$2,500 per year. *Ala. Code § 11-2A-3*. Additionally, any official operating a one-stop tag program is entitled to any increase necessary to ensure that he or she receives \$3,000 per year for the administration of that program. *Ala. Code § 11-2A-3*.

In addition to these initial increases in compensation, the Omnibus Pay Act also addresses “future” increases for local elected officials. For the period from October 1, 2001 until August 1, 2016, *Ala. Code § 11-2A-4* provided that elected officials covered by the Omnibus Pay Act were entitled to the same uniform increases in compensation granted to county employees ***but only when those increases were granted at the time of approval of the county budget***. This provision included uniform cost-of-living increases, longevity increases, merit raises, and bonuses. The county commission did not have any discretion regarding granting these increases if it granted a uniform increase to employees at the time of adoption of the budget.

The legislature amended *Ala. Code § 11-2A-4* in 2016 (Act 2016-335) to make two technical, but important, changes to the process

⁴ All counties have now “opted in” to the Omnibus Pay Act.

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for increasing county officials' compensation. First, the Act eliminated the restriction that county elected officials only receive compensation increases granted to county employees ***at the time of adoption of the budget***. Therefore, effective August 1, 2016, county officials will receive any uniform increases granted to all county employees ***regardless of when the increases are approved by the commission***. Second, the law now provides that county officials only receive "the same uniform increases in compensation . . . that are granted equally to all county employees by the county commission". This includes increases based upon a percentage of compensation or a flat dollar amount, ***but only those increases that every county employee receives and only those increases that are uniform***. The amended law eliminates specific references to the type of increase granted (i.e., cost-of-living, longevity, merit, or bonus). The county commission still does not have any discretion about granting the increases if the criteria for increases under the law are met.

The law still allows for local laws addressing compensation and expense allowances for local elected officials covered by the Omnibus Pay Act. However, there are limitations on the ability of a county official to receive the "uniform" increases under the Omnibus Pay Act if that official has received any increases pursuant to a local law. *Ala. Code § 11-2A-4(b)* provides that an official receiving increases pursuant to a local law shall not be entitled to any increases granted under the Omnibus Pay Act "until such time as the total compensation he or she would have received under [the Act] is equal to or exceeds the increase provided by local law." Additionally, the law does not apply to any official whose salary is tied to the salary of another elected official or to any judge of probate on the fee system.⁵ *Ala. Code § 11-2A-7(a)*.

In order to comply with the constitutional prohibition against public officials receiving increases in compensation during a term of office, all increases granted under the Omnibus Pay Act are initially treated as expense allowances, but become compensation

⁵ Only the Monroe and Marion County judges of probate are still on the fee system.

at the beginning of the next term of office. *Ala. Code § 11-2A-2(5)*.⁶

Ala. Code § 11-2A-2(4) provides that persons serving as supernumeraries are not entitled to any increases granted under the Omnibus Pay Act. However, deductions from the increases paid to county officials under the Omnibus Pay Act shall be made for applicable supernumerary or other retirement programs in the same manner as other compensation received by the official.⁷

2. Coroners and Constables

Alabama's general law provides for coroners and constables to be paid out of fees for services set out in the law. *See Ala. Code § 12-19-92* for constables and *Ala. Code § 12-19-93* for coroners. Pursuant to *Ala. Code § 12-19-94*, fees "shall be payable from the county treasury upon a sworn statement certified by the circuit clerk and shall not affect the collection and distribution of uniform fees." Many counties have local laws setting a salary and/or expense allowance for coroners (and some constables), but absent such local law, the county commission has no authority to pay these officials more than the amounts set out in these general laws.

3. Boards of Registrars

Effective October 1, 2016, members of the Board of Registrar are paid \$80.00 per day "for each day's attendance upon business of the board". *Ala. Code § 17-3-5*.⁸ The county commission pays this salary to the registrars and is reimbursed by the state comptroller on a monthly basis. Many counties have local laws requiring the county to pay additional amounts to the registrars either as an expense allowance or county supplement. These additional amounts are not reimbursed by the state.

⁶ See, *Ala. Const. §§ 68 and 281* and discussion below regarding application of these constitutional provisions.

⁷ See Section C below for an explanation of supernumeraries.

⁸ See *Act 2016-311* increasing compensation for registrars effective October 1, 2016.

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Ala. Code § 17-3-13 provides authority for the county commission to grant a one-time increase in compensation for members of the Board of Registrars. Any increase granted pursuant to this Code section shall not be reimbursed by the state.

4. Increases or Decreases in Compensation of Local Elected Officials

Ala. Const. § 281 prohibits an increase or decrease in the compensation of a public officer during his or her term of office. *Section 68* prohibits “any extra compensation, fee, or allowance” to be paid to any public official. However, application of these prohibitions can be very confusing. While a public official cannot receive an increase in salary during his or her term of office, expense allowances are generally allowed. Therefore, public officials, including county commissioners and other local elected officials, are sometimes granted expense allowances pursuant to local acts or application of the Omnibus Pay Act which do, in effect, result in an increase in compensation. However, these increases cannot be treated as salary until the beginning of the next term of office, and even then, only if the proper language is included in the local act granting the expense allowance.

Ala. Const. § 68 of Alabama’s Constitution also prohibits decreasing a public official’s salary. *Ala. Code § 36-6-10*, however, does allow for the “voluntary diminution of salary” under procedures set out in that Code section. This means that a county commissioner or other elected official can forego some or all of his or her salary. The attorney general’s office has held that a commissioner who has voluntarily diminished his or her compensation may not direct how the unused funds shall be spent. *See e.g. AG’s Opinion # 2008-065*.

B. PAYMENT OF EXPENSES AND BENEFITS

In addition to the payment of compensation, the county commission has authority (and in some instances is required) to pay other expenses for county elected officials. There is also

authority in the general law for providing health insurance benefits to county officials. Some of these provisions are outlined below.

1. Travel and Training Expenses

Ala. Code § 36-7-1 et seq. addresses reimbursement of travel expenses for county officers and employees. *Ala. Code § 36-7-1* provides that it is unlawful for any county officer or employee to be reimbursed for expenses unless he or she presents to the county commission an itemized statement of all expenses incurred. The request for reimbursement shall be approved or disallowed at a regular meeting of the county commission within a period of thirty days after presentment.

Ala. Code § 36-7-3 allows for advancement of travel expenses, but only if first approved by resolution of the county commission stating the purpose and object of the “proposed visit”. An itemized statement must be presented by the officer or employee immediately upon return from travel, and failure to have the itemized statement approved will make the officer or employee personally liable for the expenses. *Ala. Code § 36-7-4.*

There are other provisions relating to reimbursement of expenses for certain officers. For example, the county commission has specific statutory authority to reimburse county commissioners and other county elected officials for travel expenses. Under *Ala. Code § 11-3-4*, county commissioners are entitled to reimbursement of all actual travel expenses. This includes mileage reimbursement at the rate allowed by the IRS for all travel in his or her personal vehicle in the performance of his or her duties both inside and out of the county. ***The commissioner must provide proper documentation for reimbursement.***

Ala. Code § 17-3-5(a) allows each member of the board of registrars a mileage allowance equal to the amount allowed state or county employees, whichever is greater, for official travel and continuing education programs. The county commission pays these expenses and shall be reimbursed by the state based on a written request submitted to the state Comptroller.

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Ala. Code § 11-5-31(d) addresses minimum standard training for coroners. However, the law specifically states that the county commission is not responsible for the cost of this training unless approved by vote of the majority of the membership. *See also Ala. Code § 11-5-31(e)* regarding continuing education for coroners.

2. Payment of Association Dues and Functions

Ala. Code § 11-1-11 authorizes the county commission to pay all dues, fees, and expenses incurred by sheriffs, tax officials, and other officials for membership in and/or attendance at official functions of their state organizations. Additionally, *Ala. Code § 11-1-15* specifically authorizes county commissioners to join and participate in national and state county commission associations, and authorizes payment of necessary funds for these purposes. *Ala. Code § 36-22-19* also authorizes the county commission to pay the sheriff's dues in state and national sheriffs' associations.

It is important to note that in each of these Code sections, the county commission is authorized, but not required, to pay these dues, fees, and expenses.

3. Health Insurance for County Officials

Ala. Code § 11-91-1 et seq. authorizes the county commission to provide health and other insurance for all county officials and to contract for and purchase policies of insurance for that purpose. Pursuant to *Ala. Code § 11-91-3*, the county commission has the power and authority to determine "in their sole discretion" whether county officials will be covered and whether any premiums shall be paid in whole or in part by the commission. *See also Ala. Code § 11-91-4* which allows the commission to deduct premiums from salaries paid to those officials.

The Supreme Court of Alabama has determined that the payment of insurance premiums is considered compensation. *Opinion by the Justices, 30 So. 2d 14 (Ala. 1947)*. Therefore, it would be a violation of *Sections 68 and 281 of Alabama's Constitution* for the county commission to begin paying the premium for any official after the beginning date of his or her term of office. *See e.g. AG's*

Opinion # 98-016. For counties participating in the Local Government Health Insurance Program, there is policy related to providing insurance coverage for county elected officials and for the payment of premiums.

C. RETIREMENT AND SUPERNUMERARY BENEFITS

Ala. Const. § 98, as amended by Amendment 51, prohibits the payment of retirement benefits to elected officials, although a retirement program for judges, including judges of probate, was authorized by *Amendment 317* of the Constitution and has been established by the Legislature. *See Ala. Code § 12-18-1 et seq.* This prohibition applies to local elected officials. However, as explained below, most counties now have a local constitutional amendment authorizing certain local elected officials to participate in the Employees' Retirement System (ERS).

As a “substitute” for retirement, the Legislature has over the years created certain supernumerary programs that have allowed some former state and county officials to receive compensation as a “supernumerary official”. As explained by the Supreme Court of Alabama in *Johnson v. Board of Controls of the Employees' Retirement Systems of Alabama*, 740 So.2d 999, 1003 (Ala. 1999):

These statutes creating supernumerary positions were enacted to compensate certain public officials who had served the state for a number of years (as prescribed by statute) and who had reached a certain age (also prescribed by statute), provided that the official entering upon the supernumerary office performed certain duties prescribed by the legislature. . . . [T]he validity of these statutes depended upon the fact that these supernumerary officials performed certain duties and responsibilities [related to] the supernumerary office created. Although these statutes may have been drafted deliberately to evade the constitutional prohibition against legislation granting retirement

Compensation, Expenses, and Benefits

pay to state officials, it is clear that the compensation provided was in exchange for services performed by the supernumerary officials, as opposed to compensation for past service to the state.⁹

Ala. Code § 36-22-60 et seq., enacted in 1979, established a supernumerary program for sheriffs and *Ala. Code § 40-6-1 et seq.*, originally enacted in 1967, established a similar program for tax officials. As discussed in the *Johnson* case, these programs were designed to allow former officials who had served in office for a certain number of years to be commissioned a “supernumerary official” by the Governor and receive monthly compensation for serving in such position. The only duties of a supernumerary sheriff or tax official are to assume the duties of his or her former office in the event of a vacancy until the Governor appoints someone to fill the vacancy. *See Ala. Code § 36-22-60* for supernumerary sheriffs and *Ala. Code § 40-6-2* for supernumerary tax officials. The monthly compensation is paid for life once the former official is commissioned by the Governor regardless of whether he or she actually assumes any official duties after receiving the commission.

To be eligible for appointment as a supernumerary, the former sheriff or tax official must have contributed a portion of his or her monthly salary (usually 6%) while in office and must have served a minimum number of years in office. The former official must also reach a certain age to be eligible for a commission as a supernumerary. All of these requirements are set out in the statutes creating the sheriff and tax official supernumerary programs.

The compensation paid to the supernumerary sheriff or tax official is based upon the number of years he or she served in office as sheriff or tax official. Compensation is paid for the duration of his or her life. The surviving spouse may also receive a reduced

⁹ A supernumerary office is deemed an office of profit, which means a person serving as a supernumerary cannot also serve as a public official serving in another office of profit. *See AG’s Opinion # 2005-031*.

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benefit following the death of the supernumerary sheriff or tax official.

As noted above, compensation for a supernumerary sheriff or tax official is paid from the county general fund, although the cost for a supernumerary tax official's compensation is prorated between certain entities receiving proceeds from ad valorem tax proceeds. While these officials contribute a small percentage of their salary on a monthly basis while they are serving in office as the sheriff or tax official, this is generally woefully insufficient to absorb the cost of paying the supernumerary official's compensation during his or her life and the life of his or her surviving spouse.

In part to eliminate these costly programs, more than 60 counties have adopted a local constitutional amendment abolishing supernumerary programs and allowing certain local elected officials to participate in ERS. These amendments allow the sheriff or tax official in office at the time of ratification of the amendment to elect whether to participate in the existing supernumerary program or the ERS program. Additionally, all former officials can continue to participate in the supernumerary program when and if they are eligible. These local constitutional amendments abolish all supernumerary programs prospectively, however, meaning that any sheriff or tax official elected or appointed after the date of ratification of the county's amendment will not be eligible for a supernumerary program and, except as otherwise allowed by law, will be required to participate in the ERS program.

The local constitutional amendments abolishing supernumeraries vary somewhat regarding which local officials are eligible to participate in the ERS program. Most local constitutional amendments provide for the sheriff, tax officials, and county commissioners to participate.¹⁰ The local elected officials are required to participate under the same terms and conditions set out in *Ala. Code* § 36-27-6 for county employees. This generally

¹⁰ As noted above, judges of probate participate in the Judicial Retirement System established under *Ala. Code* § 12-18-1 *et seq.*

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means that all local elected officials in the participating counties must participate in the ERS program. *Ala. Code § 36-27-8.2* does provide limited exceptions for special circumstances, such as elected officials who are retired from ERS or the Teachers' Retirement System and are receiving retirement benefits while serving in office.

Ala. Code § 36-27-6.1 authorizes any public official authorized to participate in ERS pursuant to a local constitutional amendment to purchase service credit by paying "a sum equal to the total contributions which he or she would have made had he or she been authorized to participate during his or her tenure in office plus eight percent interest on such total contributions compounded annually from the date of the service." All local elected officials required to participate must contribute the same percentage of their compensation as the employees of the county are required to contribute. As with all participants in ERS, local elected officials must become vested in order to receive any retirement benefits under the program, and any contributions made may be returned if the official does not serve in office long enough to vest.

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CHAPTER IV

**CONSTITUTIONAL AND STATUTORY
PROVISIONS IMPACTING
COUNTY OFFICIALS AND COUNTY
GOVERNMENT**

**A. OFFICIAL BONDS FOR COUNTY ELECTED
OFFICIALS**

All county officials or officers are required “to execute official bonds for the faithful performance of their duties”. *Ala. Code § 11-2-1(b)*. Bond must be posted before an official exercises the duties of his or her office. *Ala. Code § 36-2-10*. “County official or officer” is defined in *Ala. Code § 11-2-1(a)(2)* as “A county commissioner, county taxing official, judge of probate, sheriff, coroner, or constable.” A “county taxing official” is “A tax assessor, tax collector, revenue commissioner, license commissioner, or other person charged by law in a county with the assessing or collecting of taxes.” Additional bonds may be required “as from time to time the public interest may demand and as may be required by the provisions of law.” *Ala. Code § 11-2-1(b)*. Procedures for increasing bond are discussed below. *Ala. Code § 36-5-15* provides that any officer who fails to file the required bond within the time fixed by law vacates his or her office and the vacancy is filled as provided by law.

Bonds for county officials and employees were historically set so low that even if forfeited, they would not adequately reimburse public funds for mistakes or improper activities of officials. Additionally, the law provided for forfeited funds to be paid to the state treasury even if the mistake or improper activity resulted in a loss of county funds. To address these problems, the law for setting and forfeiting bonds for county officials was substantially rewritten in 2009 to set reasonable bond amounts, clarify when and how bonds are purchased and filed, and provide more properly for deposit of forfeiture payments. *See Ala. Code § 11-2-1 et seq.*

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Additionally, the law now allows for the county commission to require bonds for appointed board members and their employees, and sets out specific provisions for the bonding of county employees as the county commission determines is appropriate. *Ala. Code § 11-2-1.*

The bond to be executed for county commissioners, sheriffs, coroners, and constables is one-half of one percent of the portion of the county budget associated with the activities of the official. *Ala. Code § 11-2-20.* However, the bond for each official is capped at \$50,000. The bond for the judge of probate is determined based on a percentage of the total annual collections published for the office at least four months prior to the date the bond is required to be filed. *Ala. Code § 12-13-33.* The bond for tax officials is based upon a percentage of ad valorem tax collections in the county. *See Ala. Code §§ 40-4-1 and 40-5-3.* The bonds for all county officials and employees are paid from the general funds of the county, except that the cost of the bond for tax officials is shared on a pro rata basis by most entities that receive a portion of the ad valorem tax. *Ala. Code § 11-2-4.*

Official bonds must be made by a surety or guaranty company authorized by the laws of this state to make bonds and qualified to do business in this state. *Ala. Code § 11-2-6.* The bond for a county official shall be filed no later than the date the official takes office or, in the case of appointment to an office, within five working days of the date the appointment is made. *Ala. Code § 11-2-6.* This section as amended in *Act 2009-744* supersedes *Ala. Code § 36-5-2* with respect to all county officials covered by this statute. All county officials or officers who fall under the definition set out in *Ala. Code § 11-2-1(a)(2)* now file bonds pursuant to § 11-2-6

The bond for all county officials except the judge of probate is filed and recorded in the probate office. *Ala. Code § 11-2-3.* The bond for the judge of probate is filed and recorded in the circuit clerk's office. *Ala. Code § 11-2-3.* This Code section also requires that duplicate copies of the bonds of the judge of probate

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and tax officials shall be filed with the state comptroller. Any official who performs an official act before his or her bond is approved and filed shall be fined not less than \$500.00. *Ala. Code § 36-5-22.*

County employees may also be required by law or the county commission to execute official bonds for the faithful performance of their duties. *Ala. Code § 11-2-1(b).* The amount of the bond for county employees required to post bond is set by the county commission. *Ala. Code § 11-2-20.* The bond is paid out of the county treasury. *Ala. Code § 11-2-4.* As an alternative to individual bonds for employees, the county commission may execute a blanket bond covering all county employees in an amount determined by the county commission to adequately protect the county. *Ala. Code § 11-2-20.* As noted above, the county commission may now also require bonds for any persons appointed by the commission to a county board or commission. *Ala. Code § 11-2-1(c)(1).*

Additional bonds may be required for county officials or county employees pursuant to a resolution of the county commission if the commission determines that current bond amounts are inadequate. *Ala. Code §§ 11-2-20 and 11-2-21.* In such case, the resolution must be signed by the commission chair and personally served on the county official or employee required to give additional bond. *Ala. Code § 11-2-21.* The additional bond must be given within 15 days after the date specified in the resolution. Failure to comply with the additional bond requirement results in vacation of office for officials or loss of employment for employees. *Ala. Code § 11-2-21.*

Ala. Code § 41-4-302 allows county officials and employees of whom an official bond is required to get surety coverage under the state blanket bond if the county commission, the Governor, and the Finance Director approve of such an insurance program. This procedure, enacted in 2003, has not been utilized.

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Prior law provided that in the event of forfeiture of any official bond, the proceeds were paid to the state. Pursuant to *Ala. Code § 11-2-1(d)* as amended in 2009, any bond proceeds from forfeiture are now distributed to the state or county fund, whichever is entitled to reimbursement for the loss. Where appropriate, payment shall be made to each eligible entity in proportion to the loss of or reduction in public funds caused by the breach of office resulting in the forfeiture.

A detailed discussion of when the bond of a county official or employee shall be forfeited is well beyond the scope of this handbook. *Ala. Code § 36-5-18* sets out the statutory grounds for forfeiture of an official's bond. In essence, the bond may be forfeited for a breach of the faithful discharge of an official's duties or for "the use and benefit of every person who is injured, as well by any wrongful act committed under color of office as by failure to perform or the improper or neglectful performance of those duties imposed by law." "Every person injured" shall include all persons having a direct and proximate interest in the official act or omission and all persons connected with such official act or omission, by estate or interest. *Ala. Code § 36-5-18(b)*.

B. LIABILITY FOR ACTIONS OF COUNTY OFFICIALS OR EMPLOYEES

Upon entering office for the first time, most county commissioners have many questions regarding liability that may arise from actions (or inactions) of county officials, employees and others involved in county government. Although a comprehensive discussion of when counties and their officials and/or employees can be held liable for their actions is far beyond the scope of this handbook, it is important for county officials to recognize the importance of acting within the "line and scope" of their duties. For example, there are some protections against liability, particularly where it is shown the official or employee was exercising "discretionary judgment" in administering a department or agency of government or discharging duties imposed by a statute, rule, or regulation. In

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addition, Alabama law also places limits on the amount of monetary judgments which can be recovered against counties and their officials and employees. *See Ala. Code § 11-93-1 et seq.* However, in recent years many plaintiffs have utilized all reasonable measures to extinguish the application of this limit. Additionally, *Ala. Code § 6-11-26* prohibits punitive damages against counties and other governmental entities. It is important to recognize that these protections and limitations do not apply in federal court.

Alabama's sheriffs (and in some cases their deputies) are granted "sovereign immunity" when acting on behalf of the state of Alabama. This protection, however, does not extend to other county elected officials – such as commissioners, tax officials, and the judge of probate. This means that the county commission, county commissioners (and other county officials), and county employees can be sued for many of the actions taken while carrying out their official duties, and can sometimes be held liable for damages when found to be negligent, reckless, or wanton in conduct. To fully understand these issues, it is important that county commissioners participate in the Association's educational programs that provide detailed explanations of potential liabilities and constructive means for avoiding lawsuits against the county, any county officials, and any employees working in county government.¹ It is also imperative that counties involve their attorneys whenever necessary to provide counsel related to the county's potential liability and efforts to avoid same. As discussed elsewhere in this handbook, counties have authority to provide insurance coverage against liability for the county, its officials, and employees, and may participate in a self-insurance fund formed by a group of counties. *See Ala. Code § 11-30-1 et seq.* More than 55 of Alabama's counties secure coverage for the county and its officials and employees through the ACCA Liability Self-Insurance Fund, which in addition to broad coverage for member

¹ As discussed in Chapter XI, the Alabama Local Government Training Institute administers educational programs for county commissioners and employees, which provide excellent resources regarding potential liability and development of policies and procedures aimed at avoiding lawsuits against counties.

counties and their officials and employees, provides several “risk management” training programs designed to help counties avoid lawsuits for negligence or improper action.

C. COUNTY COMMISSIONER SERVICE ON PUBLIC BOARDS

Ala. Code § 11-3-2 provides that county commissioners are authorized to serve on public boards other than the county commission, except where specifically prohibited by law. There are certain restrictions as follows:

- Only one member of the county commission may serve on any one board at the same time unless the law provides otherwise.
- A county commissioner cannot serve on a health care or hospital board or authority unless authorized by the board’s articles of incorporation.
- A county commissioner shall not be reimbursed for expenses by both the county commission and the public board on which he or she serves.

There may be circumstances where a county commissioner or other local official serving on a public board will need to consider whether there is a conflict of interest when considering issues related to the public board. These issues must be considered on a case-by-case basis, and a commissioner or other official should contact the Ethics Commission for guidance when there is concern that a conflict might exist.

There are some general statutes authorizing the creation of public corporations that prohibit a public official from serving on the board of directors of the public body. For example, the statute authorizing the creation of water, sewer, or fire protection authorities states at *Ala. Code § 11-88-6(c)* that, “No officer of the

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state or of any county or municipality shall, during his or her tenure as such officer, be eligible to serve as a director.” On the other hand, some statutes require that county commissioners or other local officials serve on the board of directors. As an example, *Ala. Code § 11-85-53(a)* requires that a majority of the representation on a regional planning and development commission be elected public officials of “the participating governmental units”. Therefore, county commissioners and other local officials considering service on public boards should first determine whether their participation is authorized, prohibited, or required.

D. OFFICE OF PROFIT

Ala. Const. § 280 prohibits any person from holding two offices of profit at one and the same time unless otherwise authorized in Alabama’s Constitution. There are three elements for determining whether a public official holds an “office of profit”:

1. The officer must exercise the sovereign power of the state.
2. The officer must have a fixed term of office.
3. The officer must receive compensation for the performance of his or her duties.

Any compensated elected official serves in an office of profit. *See AG’s Opinion # 2006-109*. Therefore, this provision applies to all county commissioners, sheriffs, tax officials, judges of probate, coroners, and constables. The attorney general’s office has also held that members of the board of registrars hold an office of profit. *AG’s Opinion # 2005-031*. This opinion also holds that a supernumerary holds an office of profit.

E. ALABAMA’S ETHICS LAW

Alabama’s Ethics Law at *Ala. Code § 36-25-1(27)* defines a “public official” as:

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

A “public employee” is defined in *Ala. Code § 36-25-1(26)* as:

Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county, or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee’s income.”

Under these definitions, all county elected officials and all county employees are subject to the provisions of the Ethics Law. Therefore, a good working knowledge of the law and its requirements for officials and their employees is imperative.

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1. Overview of Purpose and Scope

Alabama's Ethics Law, codified at *Ala. Code § 36-25-1 et seq.*, was originally passed in 1973 and substantially rewritten in 1995. Further amendments to the law were passed during an "ethics" legislative special session which took place in December 2010. Minor adjustments to the law have been enacted in subsequent sessions.

The purpose and objectives of the Alabama's Ethics Law are set out in the legislative findings found in *Ala. Code § 36-25-2*, which states in part as follows:

1. It is essential to the proper operation of democratic government that public officials be independent and impartial.
2. Governmental decisions and policy should be made in the proper channels of the governmental structure.
3. No public office should be used for private gain other than the remuneration provided by law.
4. It is important that there be public confidence in the integrity of government.

These findings also state that these goals are impaired when there is a conflict of interest between the private interests of a public official or a public employee and the duties of that official or employee, and that "The public interest requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to the conduct of public officials and public employees in situations where conflicts exist." *Ala. Code § 36-25-2(a)(6)*.

The Ethics Law attempts to address these objectives and concerns through statutory provisions aimed at avoiding conflicts of interest and prohibiting obtaining personal gain as a result of action or inaction as a public official or employee. Violation of the Ethics

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Law is a crime ranging from a Class A misdemeanor to a Class B felony. See *Ala. Code* § 36-25-27.² The Alabama Ethics Commission does have the authority to resolve minor violations administratively with the payment of fines and/or restitution. A minor violation is one “in which the public official or public employee receives an economic gain in an amount less than one thousand five hundred dollars (\$1,500) or the governmental entity has an economic loss of less than one thousand five hundred dollars (\$1,500).” *Ala. Code* § 36-25-1(22)(b).

Under the Ethics Law, a “conflict of interest” exists when a member of a legislative body, public official, or public employee has a substantial financial interest or is an officer or director in a business “which is uniquely affected by proposed or pending legislation”. *Ala. Code* § 36-25-5(f).³ “Substantial financial interest” means that the person owns or controls more than “five percent of the value” of the business.

There are also constitutional provisions affecting the actions of public officials and employees. See, for example, *Ala. Const.* § 101, which prohibits any county official from accepting any fee, money, office, appointment, employment, reward, or thing of value in exchange for influencing legislation and *Ala. Const.* § 94, as amended by Amendment 112, which prohibits a county or other political subdivision of the state from performing work on private property, expending public monies for non-public purposes, or otherwise granting any “public money or thing of value in aid of” any private interest.

² Additionally, under *Ala. Code* § 13A-10-62, it is a Class A misdemeanor for a public servant to fail to disclose a conflict of interest if he or she exercises any substantial discretionary function in connection with a government contract, purchase, payment or other pecuniary transaction.

³ For the purpose of the Ethics Law, the proposed or pending actions of a county commission are “proposed or pending legislation”.

2. Principles of Ethical Conduct Under the Law

In essence, Alabama's Ethics Law establishes a set of statutory ethical principles of conduct with which all public officials and employees must comply. Most of these also affect family members and/or businesses with which a public official or employee is associated. Each of the following are among the activities regulated or prohibited:

1. A public official or employee may not use his or her official position to obtain personal gain for self, family, or business. *Ala. Code § 36-25-5*. This includes a prohibition against use of public equipment, facilities, time, materials, labor, or other public property for the benefit of the public official or employee or any other person in a manner that would materially affect his or her financial interest.
2. A public official may only accept, solicit, or receive contributions for use in influencing the outcome of an election, and then only if he or she follows the procedures of the Fair Campaign Practices Act.⁴ *Ala. Code §§ 36-25-6 and 17-5-7(b)(1)*. Contributions may not be used for personal purposes. *Ala. Code § 36-25-6*.
3. A public official or employee is prohibited from soliciting or receiving anything for himself or herself or for a family member for the purpose of corruptly influencing official action. *Ala. Code § 36-25-7*.⁵
4. No person shall offer or give a public official or employee anything for the purpose of corruptly influencing official action. *Ala. Code § 36-25-7*.
5. A public official or employee may not use confidential information obtained as a result of his or her position

⁴See *Ala. Code § 17-5-1 et seq.*

⁵To act corruptly means "to act voluntarily, deliberately, and dishonestly to either accomplish an unlawful end or result or to use an unlawful method or means to accomplish an otherwise lawful end or result." *Ala. Code § 36-25-7*.

that could result in financial gain for the official or employee or any other person. *Ala. Code § 36-25-8.*

6. A public official or employee may not serve as a member of a regulatory agency that regulates any business with which he or she is associated unless specifically provided by law. *Ala. Code § 36-25-9(a).*
7. A public official may not vote or participate in any matter in which he or she or a family member has any financial gain or interest. *Ala. Code § 36-25-9(c). See also Ala. Code § 11-3-5.*
8. A public official or employee may not solicit or accept anything of value (other than in the ordinary course of business) from a person associated with a business which is regulated by the agency, board, or commission on which the commissioner serves. *Ala. Code § 36-25-12.*

3. Contracting as a Public Official or Employee

Ala. Code § 36-25-11 provides that, except where exempt from the competitive bid law or otherwise permitted, no public official or employee shall enter into any contract to provide goods or services to be paid in whole or in part out of public funds. A copy of any contract must be filed with the Alabama Ethics Commission within ten days after its execution. These restrictions also apply to family members of the official or employee and to any business with which the official or employee is associated. *Ala. Code § 36-25-5.2(b)* requires that the Ethics Commission be notified of any such contract within 30 days of beginning employment or beginning of the contract.

In addition to these restrictions on contracting with governmental entities, *Ala. Code § 11-3-5* places more stringent restrictions on a county commissioner's ability to contract with the county and on the hiring of family members to work for the county. Pursuant to *Ala. Code § 11-3-5(a)*, a commissioner or his or her business or

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family member can only enter into a contract with the county if the contract is the result of competitive bid ***regardless of whether bidding is required under Alabama's competitive bid law***. The law states that under no circumstances shall the commissioner participate in bid preparation or review of the bid and he or she shall not deliberate or vote on acceptance of the submitted bid. The commissioner must comply with *Ala. Code § 36-25-11* regarding filing the contract with the Ethics Commission.

Ala. Code § 11-3-5(b) provides that a county commissioner shall not employ a family member to do any work for the county. However, the family member of a county commissioner may be employed by the county if hired pursuant to a county personnel policy that does not require a vote of the county commission or the county commissioner does not participate in the hiring process through recommendation, deliberation, vote, or otherwise. For the purposes of this section, the definition of "family member" is the same as the definition for the family member of a public official found in Alabama's Ethics Law, which is "The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official." See, *Ala. Code § 36-25-1(15)*.

Violation of *Ala. Code § 11-3-5* is a Class A misdemeanor. Additionally, any contract executed in violation of the law shall be void by operation of law and any person employed by the county in violation of this section shall forfeit his or her employment by operation of law.

4. The Revolving Door and RSA Post-Retirement Employment Rules

The Ethics Law includes provisions that affect the activities of public officials and employees who leave public office or employment through its "revolving door" provision found at *Ala. Code § 36-25-13*. Under this section, a former public official or employee may not for a period of two years after leaving public service do the following:

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- Lobby or otherwise represent clients before his or her former employer.
- Act as counsel, advisor, or consultant in connection with a matter in which he or she participated personally and substantially or which was within or under his or her official responsibility as an official or employee.
- Solicit or accept employment with a business he or she personally and directly regulated, audited, or investigated while in public service.

Additionally, under *Ala. Code § 36-25-13(d)*, except under very limited circumstances set out below, a former employee who, as an employee, had authority to make purchases, or participated in the negotiation or approval of contracts, grants, or awards cannot enter into, solicit, or negotiate a contract, grant, or award with his or her former governmental employer for a period of two years following departure. This means that a “department head” cannot return to work with his or her former employer in *any* capacity during this period, although he or she can accept employment from another governmental entity. These restrictions do not apply to employees who did not handle these duties during their employment.

Ala. Code § 36-25-13(d) was amended in 2016 to allow a retiring department head to return to work for his or her former employer for a period not to exceed three months following retirement to provide “assistance to the governmental agency during the transitional period following retirement”. *See Ala. Acts No. 2016-128*. This provision only applies to a person who has served full-time as a “director or a department or division chief” and only under the specific circumstances and procedures set out in *Ala. Code § 36-25-13(d)*, which includes obtaining approval from the Ethics Commission Director prior to performing any services.

In addition to the provisions of the Revolving Door, government employers (like the county commission) and retiring government

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employees must also understand and comply with *Ala. Code* § 36-27-8.2 when considering post-retirement employment with an entity that participates in the Retirement Systems of Alabama (RSA). Under § 36-27-8.2, a retired employee may work part-time for an entity participating in RSA, but he or she cannot be employed in a permanent full-time capacity and there is an annual limit to the compensation that the retired employee may earn.

In an effort to curb perceived abuses of retired persons returning to work and earning more than the salary limits allowed by law, the Alabama Legislature tightened the rules on such activities during the 2014 Legislative Session. *See Ala. Acts No. 2014-297 amending Ala. Code* § 36-27-8.2. Retirees are still allowed to work for an RSA employer on a part-time basis provided the annual salary does not exceed the statutory limit,⁶ but must provide written notice of the postretirement employment to RSA and the employing authority within 30 days after the date he or she knows or should know that he or she will be performing duties on a full-time or permanent basis or will earn in excess of the annual earnings limit. These limitations and restrictions apply to a retired employee performing duties in any capacity, including as an independent contractor. *Ala. Code* § 36-27-8.2 applies without regard to the position held or duties performed by the retired employee during his or her tenure as an employee of a governmental entity participating in RSA.

5. Statement of Economic Interests

All candidates, all public officials and certain public employees are required to file a statement of economic interests with the Alabama Ethics Commission no later than April 30 of each year. *Ala. Code* § 36-25-14. This includes all county elected and appointed officials. Employees required to file this statement include anyone whose base salary is \$75,000 or more (adjusted periodically based upon the Consumer Price Index), chief administrators and managers, employees whose primary duty is to invest public funds,

⁶ The annual earnings limit was set at \$30,000.00 in *Act 2015-410*. However, this limit is adjusted annually in increments of \$1000.00 based upon the most recent Consumer Protection Index.

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purchasing or procurement agents, financial officers, grant coordinators, and supervisors. “Supervisor” is defined in *Ala. Code § 36-25-1(33)* as “Any person having authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, or discipline other public employees, or any person responsible to direct them, or to adjust their grievances, or to recommend personnel action, if, in connection with the foregoing, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment.”

The information included in the Statement of Economic Interests becomes public record once received by the Alabama Ethics Commission and is available to the general public via electronic database through their website. The Commission was mandated by legislative act originally enacted in 2010 to create an electronic database for Statements of Economic Interests redacting all identifying information. *See Ala. Code § 36-25-4.3.*

6. Reporting Ethics Violations

Ala. Code § 36-25-17 provides that a governmental agency head shall report on any ethics violations that come to his or her attention in his or her official capacity to the Alabama Ethics Commission within ten (10) days and shall cooperate as possible in any investigation or hearing conducted by the commission. There is no definition of “governmental agency head” found in the Ethics Law.

7. Required Ethics Training

Ala. Code § 36-25-4.2 requires that lobbyists, certain public officials, and any public employees required to complete the Statement of Economic Interests complete an ethics training course. Public officials shall complete the training within 120 days of taking office. *Ala. Code § 36-25-4.2(a)(4)*. Public employees must complete the training within 90 days of beginning employment. *Ala. Code § 36-27-4.2(e)*. The training may be conducted either online or in person. The curriculum and timing for the course is determined by the Executive Director of the Alabama Ethics Commission. Evidence of the training shall be

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provided to the Commission by an electronic reporting system provided on the Commission's website.

County commissioners and other local elected officials are required to complete the ethics training. *Ala. Code* § 36-25-4.2(a)(4), however, provides an "exception" to the Ethics Commission training for county commissioners who successfully complete the required 10-hour course on ethical requirements of public officials provided by the Alabama Local Government Training Institute (ALGTI). *See, Ala. Code* § 11-3-40 *et seq.* regarding that requirement.⁷ There is no similar exception for other county elected officials or for county employees required to participate in the ethics training. Therefore, other county officials and all county employees required to take the ethics training must complete the course offered by the Ethics Commission.

8. ACCA Code of Ethical Conduct

The Association of County Commissions of Alabama has drafted a model "Code of Ethical Conduct" to set the ethical standards of conduct for county commissioners.⁸ The Association recommends that the respective county commissions voluntarily adopt the standards set out in this code.

F. LOCAL LAW AND LOCAL CONSTITUTIONAL AMENDMENT PROCEDURES

In addition to the passage of "general" laws which apply statewide, counties rely heavily on local laws for the statutory authority to perform functions or create programs not provided for in the general laws of the state. Local laws are frequently passed to levy local taxes, to allow for the creation and operation of local governmental or community programs, or to establish some regulatory powers related to land use, business licensing, and/or the delivery of other services not addressed in the general law.

⁷ See Chapter X for further discussion of county commissioner training requirements and ALGTI.

⁸ A copy of this model code is found in Appendix A of this handbook.

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The procedure for passing local laws is governed in large part by Alabama's Constitution.

Ala. Const. § 106 as amended by Amendment 341 requires that the substance of a bill proposing a local law be advertised at least once a week for four consecutive weeks prior to introduction in the legislature. A bill that has not been properly advertised or that is materially altered during the legislative process is unconstitutional. These notice requirements also apply for repeal or modification of an existing local law. *Ala. Const. § 107.*

Ala. Const. § 105 prohibits the passage of a local law where a general law exists on the same subject and has, in effect, "subsumed" the subject matter. This is a complicated provision, but in essence, means the Legislature may not pass a local law that conflicts with a provision of general law. This restriction does not prohibit a local law from being enacted on a "subject" covered by general law, but such a local law must not change or conflict with the general law.

Ala. Const. § 104 prohibits the passage of local laws on certain subjects. There are 31 separate prohibitions set out in this constitutional provision. Many of these would have little impact today, but counties must be mindful of these prohibitions in planning for local legislation since any local law covering one of the subjects prohibited in this constitutional provision could be declared unconstitutional by a court of law.

Ala. Code § 11-13-6 requires the county commission to pay the cost of advertising a local bill introduced by a member of the Legislature from the county. Municipalities must reimburse the county for the advertisement of bills addressing subjects or matters exclusively relating to one or more municipalities in the county. Additionally, in the event the proceeds from revenue raising legislation is paid to an entity other than the county commission, *Ala. Code § 11-13-6* requires that entity to reimburse the county for the costs of advertising from the first revenues generated from the measure if the local bill becomes law.

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In addition to local bills, counties sometimes rely on local constitutional amendments, which are required for authority to perform some function that is specifically prohibited by state general or constitutional law. The procedures for passage and voter approval of a local constitutional amendment are set out in *Ala. Const. Amend. 555*, which provides that if a local constitutional amendment is approved by the Legislature with no dissenting votes and approved by the Local Constitutional Amendment Commission (the “Callahan Commission”), it can be submitted to vote of the people *in the affected county only*. However, if there is one or more dissenting votes cast on a proposed constitutional amendment in the Legislature or if the “Callahan Commission” does not approve the amendment by majority vote, the amendment must be placed on a statewide ballot.⁹

G. EXCLUSIVE FRANCHISE AGREEMENTS

Ala. Const. § 22 prohibits counties and other governmental entities from granting an exclusive franchise to a private business or entity. The Supreme Court of Alabama has held that this prohibition is avoided when a potential contract is competitively bid and the exclusive franchise is awarded to the successful bidder. *See Kennedy v. City of Prichard*, 484 So.2d 432 (Ala. 1986). Counties can avoid violation of this constitutional provision by ensuring any such proposed exclusive franchise contracts are the subject of a competitive bid process conducted pursuant to Alabama’s competitive bid law whether or not the “subject” of the contract would otherwise require competitive bid. *See e.g. AG’s Opinion # 2013-012 and 2000-219*.

⁹ The 2016 general election ballot included a proposed constitutional amendment altering this process. The outcome of this election was unknown at the time of publication of this Handbook.

H. JOINT POWERS ACT

Alabama law grants the county commission specific authority to enter into contracts with other counties or municipalities for the “joint exercise of any power or service that state or local law authorizes each of the contracting entities to exercise individually”. *See Ala. Code § 11-102-1 et seq.* This authority is used for a variety of joint projects between counties and other local governmental entities such as animal shelters, purchase of fuel, etc. *AG’s Opinion # 2008-125* makes clear that, under the statute, each party must have general authority to provide the power or service that is the subject of the contract.

As with other contracting powers, it is the county commission rather than other county officials that has the contracting authority for such projects.¹⁰ However, where the project involves areas that are the responsibility of other officials, the consent of those officials is required. *See e. g. AG’s Opinion # 2003-106.*

I. DATA PRIVACY

Ala. Act No. 2018-396 established statutory procedures for counties to follow regarding breaches of cybersecurity. Counties must implement and maintain reasonable security measures to protect sensitive information. *Ala. Code § 8-38-3.* They must also conduct a good faith and prompt investigation including the elements outlined in *Ala. Code § 8-38-4* if a breach has or may have occurred. Lastly, counties must give proper notification to impacted Alabama residents, the Attorney General’s Office, and consumer reporting agencies. *Ala. Code § 8-38-5 through 8-38-7.*

¹⁰ See Chapter X for further discussion of county contracting issues.

CHAPTER V

OTHER OFFICERS AND AGENCIES IN THE COUNTY

A. JUDGE OF PROBATE

While Alabama's general law provides for the judge of probate to serve as the ex officio chair of the county commission, only 13 judges of probate in the state now serve as county commission chair.¹ However, there are numerous other duties assigned to the judge of probate under Alabama's general law. See generally *Ala. Code § 12-13-30 et seq.* regarding the office of the judge of probate.² *Ala. Code § 12-13-41* sets out some of the general duties of the judge of probate. However, as shown below, this official performs many other functions as well.

The judge of probate performs the duties usually associated with probate court, including for example, the probate of wills and administration of estates. Additionally, the judge of probate has jurisdiction over competency proceedings and adoptions. In most counties, the judge of probate is the licensing official who issues driver and automobile licenses as well as business, professional, and occupational licenses, although in some counties, these duties are carried out by another official such as a revenue or license commissioner.

The judge of probate also has statutory responsibilities related to marriage. When two persons desiring to marry submit the required forms specified in *Ala. Code §§ 30-1-5 and 30-1-9.1*, the judge of probate records the marriage, collects the recording fees provided for in *§§ 12-19-90 and 30-6-11*, and forwards the information to the Office of Vital Statistics each month. *Ala. Code §§ 22-9A-17*

¹ The judge of probate serves as chair in the following counties: Blount, Cherokee, Choctaw, Cleburne, Dallas, Franklin, Geneva, Hale, Henry, Lamar, Lee, Monroe, and Tuscaloosa.

² For more details concerning the role of the judge of probate, see the most recent edition of the Handbook for Alabama Probate Judges.

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and 30-1-9.1. Neither a civil or religious ceremony of marriage nor a license is required to effectuate a marriage. *Ala. Code § 30-1-9.1.* Additionally, *Ala. Code § 30-1-7* allows, but does not require, the judge of probate to perform marriage ceremonies. The judge of probate is also responsible for the filing and recording of a vast number of legal documents as set out in various statutes throughout the general law.

Ala. Code § 17-1-3 provides that the judge of probate serves as the chief election official in the county and in this role he or she performs many duties in connection with administration of elections at the county level.³ The judge of probate receives the lists of registered voters from the county board of registrars and prepares and certifies the list of qualified electors in the county. *Ala. Code § 17-4-1.* The county commission fixes the boundaries of election districts and designates polling places pursuant to *Ala. Code § 17-6-2 through § 17-6-4*, but the judge of probate is required to publish the notice of approved boundaries and polling places. *Ala. Code § 17-6-4.* Additionally, the judge of probate must prepare the ballots to be used in elections and deliver the list of qualified electors and election supplies to the sheriff who distributes the lists and supplies among the various polling places. *See Ala. Code § 17-6-20 et seq.* regarding ballots.

Under *Ala. Code § 17-1-3*, the judge of probate serves as chair of the appointing board which is responsible for the appointment of election officials and for canvassing of election returns. The appointing board is comprised of the judge of probate, the sheriff, and the circuit clerk. *Ala. Code § 17-1-2(1).* The judge of probate is responsible for notifying appointees and publishing the list of election officials in a newspaper of general circulation in the county. *Ala. Code § 17-8-2.*

³ See, Chapter VI for a detailed discussion of election activities at the county level.

B. SHERIFF

Alabama's Constitution provides that a sheriff shall be elected in each county every four years and may be re-elected. *Ala. Const. § 138 as amended by Amendment 35*. Pursuant to *Ala. Const. § 112*, the sheriff is a member of the executive branch of state government. While the sheriff is considered the chief police officer of the county and serves as the executive officer of the courts held in the county, the sheriff and his or her deputies and jailers are considered to be state officials and not generally subject to the liability imposed on county officials.⁴ A list of some of the duties of the sheriff is set out in *Ala. Code § 36-22-3*, which include executing and returning service of process, attending sessions of court, ferreting out crime, and apprehending criminals. The sheriff is also responsible for the day-to-day operations of the county jail and plays a major role in the administration of elections at the local level. All of these duties, however, must be performed within the budgets approved by the county commission. *See Ala. Code § 36-22-2 et seq.* generally regarding the office of sheriff.

State law vests the sheriff with legal charge and custody of the county jail and all prisoners serving or housed in the jail. *Ala. Code § 14-6-1*. While the county commission is responsible for building and maintaining the jail pursuant to *Ala. Code § 11-14-10*, the sheriff controls the operation of the jail, including in most counties, the feeding of the prisoners. *See Ala. Code § 14-6-40 et seq.* Though the sheriff of the county is responsible for feeding prisoners in the jail in his or her jurisdiction unless the county commission elects to accept this duty, the sheriff is not personally responsible for the costs of feeding prisoners or any shortage in the funds provided for that purpose. *Ala. Code § 14-6-40*. The state pays \$2.25 per prisoner per day into each sheriff's office's Prisoner Feeding Fund for this purpose. *Ala. Code § 14-6-42, 47*. Under *Ala. Code § 14-6-1*, the sheriff may (and does) employ persons to carry out the duty to operate and supervise the jail.

⁴ *See e.g. Whitten v. Lowe*, 677 So. 2d 778 (Ala. 1996).

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The sheriff also performs certain duties in connection with elections. Pursuant to *Ala. Code § 17-1-2(1)*, he or she serves with the judge of probate and circuit clerk as a member of the appointing board charged with appointing election officials for the various polling places (*Ala. Code § 17-8-1*) and canvassing election returns (*Ala. Code § 17-12-15*). The sheriff is designated under *Ala. Code § 17-8-10* as the returning officer for the county and has many responsibilities regarding the distribution, collection, and preservation of ballot boxes and election supplies. *See Ala. Code § 17-12-1 et seq.* Under *Ala. Code § 17-9-1*, the sheriff is also responsible for preserving order at all polling places.⁵

It would be impossible to compile a complete list of the duties assigned to the sheriff under Alabama's general law. However, in addition to those duties set out above, the sheriff is responsible for processing applications for pistol permits and, pursuant to *Ala. Code § 13A-11-75*, must issue or deny a permit under criteria set out in the statute within 30 days of receipt of an application and fee. The sheriff may revoke an existing permit under circumstances and procedures also set out in the law. The sheriff also has statutory duties related to execution of judgments and commitment proceedings in probate court. *See e.g. Ala. Code § 22-11A-28* regarding commitments.

C. COUNTY TAX OFFICIALS

The functions of assessment and collection of ad valorem (property) tax in Alabama were traditionally separated between a tax assessor (*Ala. Code § 40-4-1 et seq.*) and tax collector (*Ala. Code § 40-5-1 et seq.*), both of whom were elected to six year terms beginning on the October 1 following their election in November of the previous year.⁶ *See Ala. Code § 36-3-5* for the

⁵ For more details on the sheriff's role in elections, *see* the Alabama Election Handbook, 16th Ed.

⁶ More details regarding the assessment and collection of ad valorem taxes can be found in Chapter VIII.

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tax assessor and *Ala. Code* § 36-3-6 for the tax collector. Some counties still operate under this system. However, the offices of tax assessor and tax collector have been combined in the majority of counties by local law or local constitutional amendment to form the office of revenue commissioner, who is elected under the same procedures as the tax assessor or tax collector. The laws and amendments creating this office vary in some respects regarding duties of the official, but the revenue commissioner is typically responsible for the collection and assessment of ad valorem taxes and may have other responsibilities such as administering state and county business licenses and/or operating a one-stop tag program.⁷

A few counties have also created the position of license commissioner pursuant to local law. The duties of this official would be those set out in the local act creating the position.

The funding for the ad valorem tax assessment and collection functions, including compensation for the tax official(s), is included in the county budget. *See e.g. Ala. Code* § 40-6A-2 regarding compensation. Many of these costs are reimbursed through withholding of commissions from the taxes collected through the ad valorem procedure and some costs (such as the payment of compensation) are apportioned among some of the entities that receive proceeds from the property taxes collected.

D. BOARD OF EQUALIZATION

Ala. Code § 40-3-16 provides that it is the duty of the county boards of equalization “to inspect, review, revise, and fix the value of all the property returned to or listed with the assessing official for taxation each year” under the procedures set out in the law. Under this section, the board also hears taxpayer protests of their property tax valuations. *See generally Ala. Code* § 40-3-1 *et seq.* regarding the boards and process for equalization and adjustment. Each county board of equalization is composed of three members

⁷ For additional details regarding county tax official, see the most recent edition of the Handbook for Alabama Tax Administrators: Tax Assessors, Tax Collectors, License Commissioners, and Revenue Commissioners.

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appointed by the Commissioner of the Alabama Department of Revenue with the approval of the Governor. *Ala. Code § 40-3-2*. Appointments are made from a panel of at least nine nominees submitted by the county commission, the county board of education, and the municipalities of the county. All members of the board shall have been residents of the county for at least five years. *Ala. Code § 40-3-1*.

The tax assessor serves as secretary of the board of equalization but has no voice or vote in its proceedings. *Ala. Code § 40-3-6*. Pursuant to *Ala. Code § 40-3-7*, the annual term of service and compensation of members of county boards of equalization is determined by a classification system based on the total assessed value of taxable property in the counties. While the percentages vary based upon the assessed value of taxable property in the county, payment of compensation is divided between the state, the county, and some municipalities in the county. *See Ala. Code § 40-3-8*.

E. CORONER

Ala. Code § 11-5-1 provides that “A coroner for each county shall be elected by the qualified voters thereof and shall hold office for four years from the first Monday after the second Tuesday in January next after his election and until his successor is elected and qualified.” No person may serve as coroner unless he or she meets the qualifications set out in *Ala. Code § 11-5-33*. Additionally, effective March 1, 2007, any coroner, deputy coroner, or any person authorized to represent the county coroner shall annually complete 12 hours of training approved by the Alabama Coroner’s Training Commission. *Ala. Code § 11-5-31(e)*.⁸ Coroners usually receive compensation in the form of fees as provided in *Ala. Code §§ 12-19-93 and 12-19-94*, but in some counties they are paid a salary pursuant to local law. The coroner may appoint deputies, but only with approval of the county commission. *Ala. Code § 11-5-34*.

⁸ *See Ala. Code § 11-5-30 et seq.* for additional information about the Alabama Coroner’s Training Commission and coroner training requirements.

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Under *Ala. Code § 11-5-10*, the judge of probate may appoint a special coroner under the following circumstances:

1. When the coroner has not qualified or the office is vacant and the emergency requires such officer;
2. When the coroner is absent from the county and there is no deputy coroner;
3. When the coroner is imprisoned; or,
4. When the sheriff and coroner are both parties or both interested in a case.

A few counties have enacted local laws abolishing the position of coroner and providing for the functions of that office to be performed by some other persons, such as a medical examiner.

The coroner's principal duty is to investigate cases of violent or unusual death to determine the cause of death. *Ala. Code § 15-4-2*. Under *Ala. Code § 11-5-5*, the coroner must discharge the duties of the sheriff when that office is vacant, the sheriff is incompetent or imprisoned, or the sheriff is a party in a case. Additionally, the coroner discharges the duties of the sheriff in cases as directed by the judge of probate. The coroner is not entitled to the sheriff's compensation when acting as sheriff. *See e.g. AG's Opinion # 2002-207*.

Ala. Code § 11-5-50 provides that, except where there is a local law or agreement providing otherwise, the coroner is responsible "for carrying out the duties required for proper transportation of a body to a forensic sciences laboratory for the purpose of performing an autopsy or any other postmortem examination ordered". Under this Code section, the coroner is also responsible for storage of a body prior to transportation and shall coordinate with the Department of Forensic Sciences regarding the storage and transportation of the body to the laboratory designated by that

Department. *Ala. Code § 11-5-51 et seq.* set out procedures for the coroner to be reimbursed for the expenses of storage and transportation under certain circumstances. *Ala. Code § 11-5-53* provides that the county commission shall pay the expenses if the coroner complies with the procedures for itemizing expenses and obtaining reimbursement, but the county commission shall not be responsible for payment of any expenses if the coroner does not so comply.

F. CONSTABLES

Ala. Code § 36-23-1 authorizes the election of one constable for each election precinct in each county to hold office for a term of four years. *Ala. Code § 36-23-1(b)* provides that any county may, by local legislation, abolish the office of constable. Many counties have abolished this position.

The duties of constable set out in *Ala. Code § 36-23-6* are as follows:

1. To attend the circuit court of the county when summoned by the sheriff;
2. To execute and return all summons, executions and other process as directed by any lawful authority;
3. To pay moneys collected to the person entitled to same; and
4. To perform such other duties as are or may be required by law.

Ala. Code § 36-23-5 states that the constable “shall be a conservator of the peace” in his or her county. Constables receive compensation in the form of fees for the performance of their various duties and services. *See Ala. Code §§ 12-19-92 and 12-19-94.*

G. BOARD OF REGISTRARS

Voter registration is administered by county boards of registrars, which consist of three "reputable and suitable" electors of the county appointed by a state board composed of the Governor, the State Auditor, and the Commissioner of Agriculture and Industries. *Ala. Code § 17-3-2*. The state board shall appoint one member as chair of the board of registrars. Pursuant to § 17-3-2, registrars shall be qualified electors and residents of the county, shall have a high school diploma or equivalent, and shall possess minimum computer and map reading skills necessary to function in the office. The registrars shall not hold an elective office during their term. Registrars serve for four years from the date of appointment and until a successor is appointed, but the Secretary of State may remove them for cause by submitting written reasons to the registrar and the state appointing board. *Ala. Code § 17-3-3*.

Generally, county boards of registrars have offices in the county courthouse and if there are two courthouses are to divide their time between the courthouses as appropriate. *Ala. Code § 17-3-9*. Additionally, in counties with public or private universities with enrollments in excess of 500 students, the county board of registrars is required to meet on the school campus to register voters on at least one full working day during the school year. *Ala. Code § 17-3-11*. Public notice of dates, times, and location of such special registration is required at least twelve days in advance of the scheduled special sessions.

The number of days in which the board of registrars shall meet is set out in *Ala. Code § 17-3-8*, and varies considerably depending upon the county. Pursuant to *Ala. Code § 17-3-8(e)*, the actual number of sessions held shall be determined by a quorum of the board based upon the needs of the county. *Ala. Code § 17-3-8(f)* authorizes the board to hold up to 25 special session days away from the courthouse. As with the sessions held on school campuses, advance public notice of the sessions' times and dates must be given.

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The procedures, requirements, and restrictions for registration of voters is found in *Ala. Code § 17-3-50 et seq.* In addition to processing and approving applications for voter registration, the boards of registrars have several responsibilities with regard to the maintenance of voter lists both prior to an election and throughout the year. For example, *Ala. Code § 17-4-3* requires the board to purge the statewide voter registration list on a continuous basis whenever it confirms information that a registered voter in the county has died, become a nonresident of the state or county, been declared mentally incompetent, been convicted of any offense that disqualifies a person from voting, or otherwise become disqualified as an elector.

Ala. Code § 17-4-30 requires the boards of registrars to send postcards to all registered voters every four years to assist in updating voter registration lists under procedures set out in the law. See generally *Ala. Code § 17-4-1 et seq.* regarding maintenance of county voter registration lists and *Ala. Code § 17-4-30 et seq.* regarding the statewide voter registration file.

In addition to these registration and voter list maintenance duties, boards of registrars have a number of responsibilities related to the verification and processing of provisional ballots voted at any election. See *e.g. Ala. Code § 17-10-2.*

H. THE COURT SYSTEM

Ala. Const. Amend. 328, known as the “Judicial Article”, governs Alabama’s court system. *Section 6.01* of the Judicial Article provides that “the judicial power of the state shall be vested exclusively in a unified judicial system which shall consist of a supreme court, a court of criminal appeals, a court of civil appeals, a trial court of general jurisdiction known as the circuit court, a trial court of limited jurisdiction known as the district court, a probate court and such municipal courts as may be provided by law.”

Section 6.04 of the Judicial Article provides for dividing the state into judicial circuits “having such divisions and consisting of such

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number of judges as shall be provided by law.” These “circuit courts” shall exercise general jurisdiction except as may otherwise be provided by law. *Ala. Code § 12-11-1 et seq.* governs the structure and operation of Alabama’s circuit courts and *Ala. Code § 12-17-20 et. seq.* addresses circuit judges. Pursuant to *Ala. Code § 12-11-2*, there are currently 41 judicial circuits. *Ala. Code § 12-17-20* establishes the number of circuit judges sitting in each circuit.

Section 6.05 of the Judicial Article provides for each county to have a district court of limited jurisdiction which shall hold court in each county seat. *Ala. Code § 12-12-1 et seq.* governs the structure and operation of Alabama’s district courts and *Ala. Code § 12-17-60 et. seq.* addresses district judges.

There are also provisions governing probate and municipal courts in the Judicial Article. *See Ala. Const. Amend. 328, § 6.06 and § 6.065.*

Because the Judicial Article created a state court system, personnel employed with the district and circuit courts are state employees. *Ala. Code § 12-17-1.* County commissions are responsible for providing building space, fixtures, and most utilities for the district and circuit courts. *See, e.g., Ala. Code § 11-3-11(a)(1).* *See also Rule 3 of the Alabama Rules of Judicial Administration.* The state, through the Administrative Office of Courts, is responsible for providing equipment, furniture, and supplies, for paying long distance phone charges, and for the day-to-day operations of district and circuit courts. *Ala. Code §§ 12-19-1 through 12-19-10.* Consequently, most court costs and fees of these courts are now paid into the state treasury. In 1999, the Alabama Legislature enacted a uniform judicial pay plan which provided for annual increases based upon bench experience of the circuit or district judge. *See Ala. Code § 12-10A-1 et seq.* County supplements paid to judges were phased out pursuant to *Ala. Code § 12-10A-2*, with future supplements prohibited under *Ala. Code § 12-10A-2(3).*

Except for municipal judges, all judges are elected and serve for terms of six years. *Ala. Const. Amend. 328, § 6.15(a).* *See also*

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Ala. Code § 36-3-2. No person shall be elected or appointed to a judicial office after reaching 70 years of age. *Ala. Const. Amend. 328, § 6.16.* All judges except judges of probate must be lawyers. *Ala. Const. Amend. 328, § 6.07.* See also *Ala. Code § 12-13-31.* Rather than removal proceedings under the impeachment process, judges are subject to discipline and removal by a Court of the Judiciary on charges brought by a Judicial Inquiry Commission, See, *Ala. Const. Amend. 328, §§ 6.17 and 6.18.*

I. THE CIRCUIT CLERK

Section 6.20(b) of the Judicial Article (*Ala. Const. Amend. 328*) provides that “clerks of the circuit courts shall be elected by the qualified electors in each county for a term of six years.” Vacancies are filled by the judge or judges of the circuit court having jurisdiction over the county in which the office of circuit clerk is located. The general duties of the circuit clerk, who is responsible for maintaining the records of the cases filed in circuit court, are set out in *Ala. Code § 12-17-94.* Additionally, the circuit clerk usually serves as the absentee election manager during any elections held in the county. See *Ala. Code § 17-11-1 et seq.*

Circuit clerks are part of the state court system. The compensation for circuit clerks and their staff is paid by the state. *Ala. Code § 12-17-80.* The salaries for the circuit clerk are set out in *Ala. Code § 12-17-81.* Some counties pay a local supplement to the circuit clerk pursuant to a local law.

J. THE DISTRICT ATTORNEY

Section 6.20(a) of the Judicial Article (*Ala. Const. Amend. 328*) provides that a district attorney shall be elected for each judicial circuit by the qualified electors of the counties in the circuit. The district attorney shall be licensed to practice law in Alabama and shall, at the time of his or her election and while in office, reside in his or her circuit. The term of office for the district attorney is six years. See also *Ala. Code § 12-17-180.* Pursuant to *Ala. Code §*

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12-17-182, district attorneys receive an annual salary equal to \$1,000 less than the salary of circuit judges. District attorneys are paid exclusively out of the general fund of the state treasury. *Ala. Code § 12-17-182*. While some counties have local laws providing a county supplement for the district attorney, *Ala. Code § 12-10A-6* (enacted in 1999) provided that any local supplement paid to a district attorney would be reduced by any increase in his or her state compensation until the supplement is eliminated. This section also provided that no district attorney appointed or elected after October 1, 2001, shall receive a county supplement or expense allowance in addition to his or her state salary.

The general powers and duties of the district attorney are set out in *Ala. Code § 12-17-184* and include attending grand juries, drawing up all indictments, and prosecuting all indictable offenses. Additionally, he or she is charged with prosecuting or defending civil actions in the circuit court of which the state is interested and when requested to do so by the proper authorities, and making investigations and recommendations in connection with pardons and paroles in cases arising in the circuit.

Ala. Code § 12-17-184(8) authorizes the district attorney to provide legal counsel to all county officers as to matters concerning their respective offices. This section allows the county commission to retain or employ attorneys when it is deemed advisable or necessary and all counties now have a county attorney providing services for the county either on a contract basis or as an employee of the county.

K. THE DEPARTMENT OF HUMAN RESOURCES

While Alabama law includes several provisions authorizing the county commission to assist and provide for the poor and elderly,⁹ the Alabama Department of Human Resources – and the county departments operating under the supervision of that state department – are charged by law with the duty and responsibility for administering and supervising public assistance and welfare

⁹ See e.g. *Ala. Code § 38-8-1 et seq.* See also *Ala. Code § 38-2-9*.

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programs in the state including but not limited to carrying out welfare functions, assisting other state and federal departments, agencies, and institutions as necessary, and administering any federal funds granted to the state to aid in any of the functions of the department. *Ala. Code § 38-2-6*. To accomplish the goals and objectives of the department at the local level, each county in Alabama has a county department of human resources operated by a county director and “such other employees as may be authorized by the county board and the state department”. *Ala. Code § 38-2-8*. The county director and employees of the county department are state employees working under the supervision of the county and state departments.

There is in each county, a seven member county board of human resources selected by the county commission from residents in the county “on the basis of their recognized interest in public welfare”. *Ala. Code § 38-2-7*. At least two of the members must be women and no member can hold public office. In counties that contain cities having a population of 60,000 or more inhabitants, the governing body of the city has equal authority with the county commission in appointing the members of the county board of human resources. The attorney general’s office has stated that this means the municipality and the county have an equal number of votes in selecting the members of the county board of human resources. *See AG’s Opinion # 2002-307*.

Ala. Code § 38-2-7 provides that members of county boards of human resources serve for terms of six years. The county board selects a chairperson and a secretary to serve at its pleasure. The board holds its meetings under rules it establishes in conformity with the regulations of the state board.¹⁰ Members of the county board receive no compensation for their services, but are reimbursed for expenses incurred in attendance at the meetings of the board or during the course of departmental business.

¹⁰The Open Meetings Law also requires all governmental bodies to establish meeting rules of procedure. *See Ala. Code § 36-25A-5*.

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The functions of the county board include duties of a general advisory and policy-making nature and, under the provisions of the state merit system, appointing the director of the county department of human resources. The county board, subject to the provisions of the state merit system, also appoints a county director, who serves at the pleasure of the board as executive officer of the county department. *Ala. Code § 38-2-7.* The appointment is made without regard to political affiliation. The law requires the appointment to be made, if possible, from among residents of the county in which the vacancy occurred. However, if no appointment can be made from among the residents of the county, the board appoints a director from the statewide register. *Ala. Code § 38-2-7.*

L. COUNTY EXTENSION SERVICES/AGENTS

The Alabama Cooperative Extension System (ACES) operates as the primary outreach organization for the land-grant functions of Alabama A&M and Auburn Universities. To provide services throughout the state, there are extension service agents in each county, with one agent in each county serving as coordinator of the county extension staff. Extension agents specializing in agricultural programs direct farm demonstration work in the county and assist in disseminating the information compiled by the extension specialists at Auburn University and Alabama A&M University. These extension agents supervise 4-H club work and give advice and assistance to farmers in regard to such matters as animal husbandry, raising poultry, horticulture, landscape gardening, entomology, forestry, soils, crops, and marketing farm products. Other county extension agents specialize in home economics. County agents also are involved in the administration of the community resource development program. More information about ACES and each county office can be obtained from their website: www.aces.edu.

M. LOCAL BOARDS OF EDUCATION

Responsibility for general administration and supervision of the public elementary and secondary schools in Alabama is divided between county school systems and independent city school systems. The county school system is composed of all public schools located within the county, except those in cities having city boards of education.

The county system is controlled by an elected county board of education. *See Ala. Code § 16-8-1. Ala Code § 16-8-1(a)* provides for a five member board. However, *Ala. Code § 16-8-1(b)* authorizes the county board to establish single member election districts with one board member elected from each district. School boards exercising this option may establish five or seven such districts. *Ala. Code § 16-8-1* requires that all candidates for the county school board be a resident of the district for at least one year before election or appointment. *Ala. Code § 16-8-1(c)* sets out other requirements for serving on the county board.

Ala. Code § 16-8-12.1 provides that county boards of education may enter into cooperative agreements, projects and programs with the county commission for the proper management of the public schools as long as those agreements are consistent and not in conflict with any law or policy of the State Board of Education or in conflict with the purposes for which the school system was established.

Pursuant to *Ala. Code § 16-9-1*, the county board of education appoints a county superintendent of education to function as secretary and chief executive of the board. *See, also, Ala. Code § 16-8-7.* The qualifications for serving as county superintendent are set out in *Ala. Code §§ 16-9-2 and 16-9-13.* Under the general law, an appointed superintendent serves for a term of not less than two nor more than four years, commencing on the first day of July next following the appointment. *Ala. Code § 16-9-1.*

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Some counties have local laws providing for the election of the county superintendent of education. In counties where the superintendent is elected by popular vote, the successful candidate takes office on the first day of January next following the election and serves for a term of four years. *Ala. Code § 16-9-8*.

Ala. Code § 16-9-24 requires that the county superintendent maintain an office at the county seat. However, local laws providing for locations elsewhere in the county are authorized in counties with a population of 100,000 or more.¹¹ Under *Ala. Code § 16-9-24*, the county commission is required to provide the county superintendent and his or her staff with ample, convenient, and comfortable office quarters, as determined by the county commission. The county commission is also responsible for providing necessary furniture, office equipment, stationery, postage, forms, and supplies.

N. COUNTY HEALTH DEPARTMENT

Each county in the state has a county health department which functions under the general supervision and control of the Alabama Department of Public Health. According to *Ala. Code § 22-3-1*, each county has a county board of health which consists of the board of censors of the county medical association and the chairperson of the county commission, who serves as an ex officio member.¹² The local board of health appoints a health officer for the county, subject to the approval of the State Committee of Public Health, an executive committee of the State Board of Health. The county board of health fixes the term of office of the county health officer at not less than three years. *Ala. Code § 22-3-2*. The health officer's salary is fixed by the appropriate merit system. *Ala. Code § 22-3-6*.

¹¹ See *Ala. Acts No. 2016-347*.

¹² The board of censors is the governing authority of the county medical association. The members of this board are elected by the members of the county association.

The county health officer, operating under the direction of the State Health Officer and the county board of health, has authority over the direction of all sanitation and public health work within the county. *Ala. Code §§ 22-3-2, 22-3-4, 22-3-5.* Although each of the state's sixty-seven counties now maintain a permanent, full-time health department, each county may not have a full-time health officer of its own. In some instances, health officers serve counties on a joint or district basis. Where physicians are not available to serve as county health officers, health services administrators are used to coordinate activities at the local level. In a number of counties, local health matters are handled by the state department. Similarly, the size and composition of county health departments vary from county to county, depending on the needs of each county and the funds available for the support of the local health organization.

O. EMERGENCY COMMUNICATIONS DISTRICTS

Ala. Code § 11-98-1 et seq. provides for emergency communications districts to establish, operate, maintain, and replace an emergency communications system that directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated. Under *Ala. Code § 11-98-2*, a county commission or municipality can create an emergency communications district within their respective jurisdictions by ordinance or resolution. There are currently 88 districts in the state. Emergency communication districts are political and legal subdivisions of the state with the power to sue and be sued in their corporate names and to incur debts and issue bonds.

Upon creation of a district, the creating authority (the county or municipality) appoints a board of commissioners composed of seven members to govern its affairs under procedures set out in *Ala. Code § 11-98-4*. Pursuant to *Ala. Code § 11-98-4(e)*, in lieu of appointing a board, the governing body of the creating authority may serve as the board of commissioners of the district. The governing bodies of the communications districts have various

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powers established by law to carry out their emergency services functions. See, in particular, *Ala. Code § 11-98-4(f) and (g)*.

Emergency communications districts were historically funded by locally-assessed telephone service charges. However, legislation passed in 2012 altered the funding mechanism for local emergency communications districts by establishing a monthly statewide 911 charge set by a statewide 911 board created in the law. See, *Ala. Acts No. 2012-293, codified at Ala. Code § 11-98-5*. The makeup and duties of the state board are set out in *Ala. Code § 11-98-4.1*.

Pursuant to the law passed in 2012, there is, effective October 1, 2013, a single, monthly statewide 911 charge imposed on each active voice communications service connection in Alabama that is technically capable of accessing a 911 system. *Ala. Code § 11-98-5*. “Active voice communication service” is defined in *Ala. Code § 11-98-1(a)(18)*, and includes all forms of voice communication including, but not limited to, landlines, cellular phones, and internet-based voice communications. The fee is set by the state 911 board pursuant to procedures set out in *Ala. Code § 11-98-5* and paid to the voice communications service provider by each subscriber or purchaser.

The state board collects the fee monthly from the provider and remits payment to the emergency communications districts under the formula and procedures set out in *Ala. Code § 11-98-5*. *Ala. Code § 11-98-6* sets out permissible uses for funds received by an emergency communications district.

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CHAPTER VI

ELECTIONS AND POLITICAL ACTIVITIES OF COUNTY EMPLOYEES

This chapter provides a very general overview of elections in Alabama, with emphasis on the election activities which involve or affect the county commission. For a much more detailed explanation and understanding of elections in Alabama, see the most recent edition of the Alabama Election Handbook.

A. COUNTY COMMISSION ROLE IN ELECTIONS

While the judge of probate serves as the chief election official and generally oversees elections at the local level, the county commission plays an important role in many election-related activities. As discussed in more detail below, the county commission is responsible for the following:

- Setting precincts in even-number years. *Ala. Code § 17-6-2.*
- Assigning and maintaining polling places. *Ala. Code § 17-6-4.*
- Coordinating with the judge of probate for publication of election notices and the voter lists. *Ala. Code § 17-6-4.*
- Paying all election expenses and seeking reimbursement where appropriate. *Ala. Code § 17-16-2 et seq.*
- Purchasing and maintaining election equipment. *Ala. Code § 17-7-1.*

B. ELECTION OFFICIALS

Alabama law provides for precinct election officials (poll workers) to be placed at each polling place on election day. *Ala. Code § 17-8-1. See also Ala. Code § 17-1-2(21).* The duties of the election officials are set out in *Ala. Code § 17-8-1(b).*

The election officials are appointed by the county's appointing board, which pursuant to *Ala. Code § 17-1-2(1)*, consists of the judge of probate, sheriff, and circuit clerk. There shall be at least one inspector for each voting place. *Ala. Code § 17-8-1.* The "inspector" is defined as the election poll worker in charge of a precinct who serves as chief returning officer for the precinct. *Ala. Code § 17-1-2(13).*

The appointing board may appoint the number of precinct election officials necessary for each precinct, provided that, absent consent of the county commission, the total number of precinct election officials appointed in a county shall not exceed the total number of precinct election officials who were paid by the county for the general election held in November 2004. *Ala. Code § 17-8-1.* If the number of precincts or voting places utilized in an election within a county is increased or decreased, the total number of election officials who may be appointed without consent of the county commission shall be increased or decreased proportionately based on the average number of workers utilized in each precinct or polling place within the county. *Ala. Code § 17-8-1.*

Under *Ala. Code § 17-8-13*, any election official who works for an employer with more than twenty-five employees shall be excused from his or her employment to perform his or her duties on election day without loss of time. The employer may, but is not required, to pay the employee his or her regular salary for the day.

Ala. Code § 17-8-1(c) allows for election officials other than the inspector to work on a split shift schedule if determined necessary by the judge of probate. Each portion of a split shift shall consist of not less than six consecutive hours of work and the worker shall

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be paid one-half of the per day compensation provided for by general or local law in the county.

Under *Ala. Code § 17-8-1(d)*, the judge of probate or other appropriate election officials in a county may provide for the appointment of additional inspectors and clerks from within the county at-large to serve as alternates in the event an appointed inspector or clerk is unable to perform his or her duties on election day. The guidelines set out in this Code section must be followed for appointing and utilizing alternates.

Ala. Code § 17-8-2 provides that, following the appointment of election officials, the judge of probate shall notify each official of his or her appointment by mail and publish a list of the election officials in a newspaper of general circulation published in the county.

Under Alabama law, election officials are paid a minimum of \$50 per day in all elections. *Ala. Code § 17-8-12(a)*. The cost of this compensation is reimbursed in the same manner as other election expenses pursuant to *Ala. Code § 17-16-1 et seq.*¹

In addition to the \$50.00 compensation paid in all elections, there is additional compensation paid to election officials in statewide elections pursuant to *Ala. Code § 17-8-12(b)*. This Code section provides that the state is responsible for the additional amounts paid and shall reimburse the counties for same. *See also Ala. Code § 17-6-2*. Under *Ala. Code § 17-8-12(b)*, returning officers and clerks are paid an additional \$75.00 per day and inspectors are paid an additional \$100.00 per day.

A separate \$25.00 supplement is also paid by the state to all election officials who complete a local election school or are certified by the judge of probate as a qualified poll worker. *Ala. Code § 17-8-12(b)*.

¹ This process is discussed in more detail below.

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Some counties have local laws providing for additional compensation or a county supplement to be paid to election officials by the county. *Ala. Code § 17-8-12(b)* specifically provides that the additional amounts paid in a statewide election pursuant to this section shall not increase or decrease any salary supplements paid under a local law in place on October 1, 2005. However, if a local act provides for amounts in excess of those set in *Ala. Code § 17-8-12*, the county commission must pay the greater amounts. There is no prohibition in the law against passage of local laws providing additional amounts for election officials. However, any local act that provides for amounts less than those set in *Ala. Code § 17-8-12* has been superseded by this law.

C. VOTER REGISTRATION LISTS

As discussed in Chapter V, voter registration is administered by the county boards of registrars as provided in *Ala. Code § 17-3-1 et seq.* Under *Ala. Code § 17-3-50*, the board of registrars shall not register any person as a qualified elector within 14 days prior to any election.

Under *Ala. Code § 17-4-2*, after registration has closed and within the 10-day period before an election, the judge of probate shall prepare and print a report from the state voter registration list of the correct alphabetical lists of the qualified electors as set out in the section. Alternatively, the judge of probate can use electronic poll books. *Ala. Code § 17-4-2.1*. The judge of probate must also publish the voter registration list in a newspaper of general circulation in the county twenty days before the primary. *Ala. Code § 17-4-1*. The list may be published, at the discretion of the county commission, as a preprinted or inserted advertising supplement at a cost no greater than the selected newspaper's lowest applicable national insertion rates. The county commission may provide for publishing the list in more than one newspaper within the county. The state shall reimburse the county for the cost of publishing the list in state elections as provided in *Ala. Code § 17-16-3*.

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Ala. Code § 17-3-60 provides that the judge of probate is entitled to an amount not to exceed five cents a name for the preparation of the lists of qualified electors that are used in the polling places. The judge of probate is entitled to this compensation regardless of whether he or she is salaried or paid under the fee system and regardless of what functions he or she performs in preparing the lists.

In 2016, the Alabama Legislature enacted a new law authorizing the Secretary of State to implement a pilot project for using electronic poll books in lieu of printed voter lists. *See Ala. Code § 17-4-2*. The act requires the consent of the county commission and judge of probate for participation in the project, and sets out procedures to be implemented to ensure the accuracy and protection of data included in the electronic poll books. Then, *Ala. Acts 2017-340* took a step towards mainstreaming electronic poll books by deleting all references to these being “pilot projects.” *See Ala. Code § 17-4-2.1*

D. ESTABLISHING PRECINCTS AND VOTING MACHINES

Ala. Code § 17-6-2 provides that the county shall establish precincts, define the territorial limits for which each precinct, prescribe precinct boundaries using federal census tracts and block maps, and designate the precincts. Under *Ala. Code § 17-6-2(b)*, each precinct shall be a contiguous, compact area having clearly defined and clearly observable boundaries coinciding with visible features readily distinguishable on the ground.

Precinct changes should be made when there are changes in population which result in more than 2,400 qualified voters for a single electronic voting machine. *Ala. Code § 17-6-6(c)*. See, also, *Ala. Code § 17-6-3(a)*. Under *Ala. Code § 17-6-3(a)*, when a precinct exceeds these limits, the county commission can subdivide the precinct, add additional electronic voting machines to a polling place, or establish voting districts within the precinct with separate locations to vote.

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In setting precincts, the county commission must keep in mind that state law requires a uniform ballot for each polling place. *Ala. Code § 17-6-23*. This, in effect, mandates that precincts not cross boundaries of any other electoral districts. The boundaries of county commission districts, legislative districts, congressional districts, and other electoral boundaries must be taken into account to maintain a uniform ballot.

Along with the addition of electronic voting machines or boxes, the commission also can divide a precinct into voting districts to solve overcrowding. *Ala. Code § 17-6-3(b)*. When an election precinct has been divided into voting districts, a description of the boundaries of the district must be filed with the judge of probate immediately, and a copy must be posted at the courthouse. *Ala. Code § 17-6-3(d)*.

Any change in precincts shall be made at the first regular county commission meeting in March in each even-numbered year. *Ala. Code § 17-6-3*. Precincts and their polling places cannot be changed within three months prior to an election. *Ala. Code § 17-6-4(d)*.

The county commission shall provide and maintain at all times a suitable map showing the current geographical boundaries with designation of precincts and a legal description of the geographical boundaries of each precinct. *Ala. Code § 17-6-2(c)*. A copy of the map, with a description of the most recent precinct boundaries, must be forwarded to the county board of registrars, the judge of probate, and the permanent Legislative Committee on Reapportionment. The map must indicate the date of last revision. The copy sent to the Legislative Committee on Reapportionment must be certified and sent within thirty days of adoption of the changes. *Ala. Code § 17-6-6(e)*.

E. POLLING PLACES

The county commission selects at least one polling place for each

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precinct. *Ala. Code §§ 17-6-3 and 17-6-4.* The courthouse serves as the polling place for the precinct in which it is located unless the county commission determines otherwise. *Ala. Code § 17-6-4(e).* Pursuant to *Ala. Code § 17-6-4(b)*, within five days after the commission files the boundaries of election precincts and names voting places, the judge of probate shall give notice in some newspaper of general circulation published in the county and shall have notice posted by the sheriff at the courthouse and at two public places in the election district of the precinct. The notice shall describe the election precincts by numbers and shall specify the place where elections are to be held.

Polling places cannot be changed within three months of an election. *Ala. Code § 17-6-4(d).*

Polling places designated by the county commission must be used for primary, general, and special elections involving federal, state, district, and county offices. *Ala. Code § 17-6-4(d).*

To reduce costs for elections, some counties have moved to voting centers, which combine voters from two or more precincts into a centralized location. *Ala. Code § 17-6-4(c)* provides that voting centers can be established by local law.

Pursuant to *Ala. Code § 17-9-6*, polling places shall open for voting on election day at 7:00 A.M. and shall close at 7:00 P.M. Polling places in areas operating on eastern time shall open and close pursuant to eastern time except the county commissions in Chambers County and Lee County may by resolution provide for any polling place to be excluded from this provision and to be open according to central time.

F. VOTING EQUIPMENT

The federal Help America Vote Act (HAVA) of 2002 required, among other things, that all electronic voting systems in the country comply with the requirements of the federal law. Alabama enacted a state Alabama's Help America Vote Act in 2003, which

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established a committee to identify federally-compliant equipment and set out the requirements for same in line with the federal law. *See Ala. Code § 17-2-1 et seq.* These two laws necessitated the purchase or lease of new election equipment in all 67 counties. *Ala. Code § 17-2-4(h)* provided for the purchase of HAVA-compliant voting equipment with federal HAVA funds provided to the state for this purpose. The county commissions and judges of probate in the state worked in cooperation to ensure all counties obtained HAVA-compliant voting equipment, and the Association of County Commissions of Alabama, conducted a joint bid for equipment under its County Joint Bid Program. Counties are generally required to pay the costs of election equipment pursuant to *Ala. Code § 17-7-1*.

Ala. Code § 17-7-21(b) requires that electronic voting machines meet the following requirements:

1. Permit and require voting in secrecy.
2. Permit the voter to vote for as many persons for an office as he or she is entitled to vote for and to vote for or against any question upon which he or she is entitled to vote.
3. Permit the voter to vote a straight political party ticket in one operation except in primary elections.
4. Permit automatic tabulating equipment to be set to reject all votes for any office or question when the number of votes exceeds the number which the voter is entitled to cast or when the voter is not entitled to cast a vote for the office or question.
5. Is capable of correctly counting votes.
6. When used in primary elections, counts only votes for candidates of one party, rejects all votes for an office when the number of votes exceeds the number the voter

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is entitled to cast, and rejects all votes of a voter cast for candidates of more than one party.

7. At presidential elections, permits each elector, by one operation, to vote for all presidential electors of a party or independent candidates for president or vice president.
8. Provides a method for write-in voting.
9. Is capable of accumulating a count of the specific number of ballots tallied for a precinct, accumulating total votes by candidate for each office, and accumulating total votes for and against each question on the ballot.
10. Is capable of tallying votes from ballots of different political parties from the same precinct in the case of a primary election.
11. Is capable of automatically producing precinct vote totals in printed, marked, or punched form, or a combination thereof.
12. Is capable of accurately and correctly tabulating each vote and having it so certified.

Under *Ala. Code § 17-2-4*, electronic voting systems must meet the following requirements:

1. Permit the voter to verify, in a private and independent manner, the votes selected by the voter on the ballot before the ballot is cast and counted.
2. Provide the voter with the opportunity, in a private and independent manner, to change the ballot or correct any error before the ballot is cast and counted, including the opportunity to correct the error through the issuance of

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a replacement ballot if the voter was otherwise unable to change the ballot or correct any error.

3. Notify the voter that he or she has selected more than one candidate for a single office on the ballot before the ballot is cast.
4. Ensure that any notification required preserves the privacy of the voter and the confidentiality of the ballot.
5. Produce a permanent paper record with a manual audit capacity for such system.
6. Be accessible for individuals with disabilities, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters.
7. Provide alternative language accessibility.

In addition to the above, the error rate of the voting system shall comply with the error rate standards established under the voting systems standards issued by the Federal Elections Commission.

G. QUALIFYING DEADLINES AND BALLOT PREPARATION

In order to allow adequate time for preparation and distribution of ballots for persons voting by absentee ballot, *Ala. Code § 17-6-21* provides that candidates in a primary or general election shall be finalized not later than 76 days before the primary or general election under the procedures set out in this Code section. In order to meet this deadline for primary elections, all candidates for office must file their declaration of candidacy with either the state party chair (for non-county offices) or with their county party chair (for county offices) 116 days before the date of the primary election and the state or county party shall certify the names of all

candidates for nomination 82 days before the primary election. The Secretary of State then certifies the names of the opposed candidates not less than 74 days prior to the date of the primary election. *Ala. Code § 17-13-5. See Ala. Code § 17-6-20 et seq.* generally regarding ballot preparation, etc.

H. ABSENTEE ELECTIONS

Alabama law provides a process for voters unavailable to vote at the polling place on election day to vote by absentee ballot. The general procedures for the application and processing of absentee ballots is set out in *Ala. Code § 17-11-1 et seq.* The permissible grounds for voting by absentee ballot are set out in *Ala. Code § 17-11-3.*

In order to be counted in an election, absentee ballots must generally be received by noon on the day of the election pursuant to *Ala. Code § 17-11-18(a)*, but ballots received from individuals voting pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C. 1973ff et seq. may be postmarked by the day of the election and received by mail by noon of the date 7 days after the election. *Ala. Code § 17-9-51.* There are other special provisions in the law for overseas absentee voters.

The circuit clerk serves as the absentee election manager at his or her option pursuant to *Ala. Code § 17-11-2*, and if he or she declines the duties of absentee election manager, the county appointing board shall appoint an absentee election manager. Absentee election managers receive the same pay as election inspectors, and are compensated for 45 days prior to the election and for election day. *See Ala. Code §§ 17-11-14 and 17-8-2 and AG's Opinion # 2002-272.* The compensation is paid by the county commission and reimbursed by the state in the same manner as other election expenses pursuant to *Ala. Code § 17-16-2.* The county also pays the expenses for absentee ballots, supplies, and other materials which are also reimbursed as provided in *Ala. Code § 17-16-2.*

I. PAYMENT OF ELECTION EXPENSES

The state fully reimburses the counties for the compensation paid to election officials, election supplies, and other election expenses in elections which include only federal or state races or issues. This includes elections where only candidates for federal and state offices are nominated or elected and elections only involving constitutional amendments that affect the state as a whole. *Ala. Code §§ 17-16-4 and 17-16-6*. Under *Ala. Code § 17-16-3*, the state reimburses a county for one half of election expenses incurred in an election in which candidates for both federal or state and county offices appear on the ballot. Counties receive no reimbursement when there are only local races or issues on the ballot, which will typically be the case only in a local special election or a runoff election with only county candidates on the ballot.

Pursuant to *Ala. Code § 17-16-2*, “election expenses” are defined as:

1. The compensation and mileage provided by law for election officials.
2. The compensation provided by law for the absentee election manager.
3. The costs of ballots, supplies, and other materials or equipment necessary for election officials to conduct elections as required by law and as certified by the judge of probate as chief election official of the county.
4. The costs of absentee ballots, supplies, postage, and other materials required by law to be furnished to the absentee election manager.
5. The cost of preparing and furnishing the lists of qualified electors to the election officials as required by law.

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6. The cost of publishing any notice or other item related to any election and required by law, including, but not limited to, the publication of notice of any election and any voter lists.

In addition to the above, the state will reimburse counties for all costs incurred in the automatic recount of any statewide race if the recount is mandated under *Ala. Code § 17-16-20*. There are other special circumstances related to elections where the state is required to reimburse all costs pursuant to a provision of the state law.

Sometimes, there are federal funds available to reimburse counties for some election activities through HAVA-related grant programs. Therefore, counties should consult with the Alabama Secretary of State's office for the availability of any reimbursable costs for election equipment purchases.

J. PRECLEARANCE

The Voting Rights Act of 1965 formerly required that any changes affecting an election in Alabama such as a change in precinct boundaries or relocation of polling places be "precleared" by the U.S. Justice Department before being implemented. However, in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), the United States Supreme Court declared that the formula used to determine which state and local governments must receive preclearance was unconstitutional and could no longer be required. To date, Congress has not enacted changes in the law to revive the preclearance process. Therefore, preclearance of precinct boundaries and other election-related actions is no longer required.

K. POLITICAL ACTIVITIES OF COUNTY EMPLOYEES

Ala. Code § 17-1-4 authorizes county employees to participate in political activities. Under *Ala. Code § 17-1-4(a)*, no county employee shall be denied the right to participate in political activities to the same extent as any other Alabama citizen,

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including the following:

- Endorsing candidates and contributing to campaigns.
- Joining local political clubs and organizations and state or national political parties.
- Publicly supporting issues and petitions in support of referendums.

Pursuant to *Ala. Code § 17-17-5(a)*, however, an employee “shall be on approved leave to engage in political action or the person shall be on personal time before or after work and on holidays.” *Ala. Code § 17-17-5(c)* provides that it is a crime to use public time or property for any political activities. This section also prohibits soliciting contributions from or coercing subordinate employees. Any person violating *Ala. Code § 17-17-5* is guilty of the crime of trading in public office, which is punishable by imprisonment of not more than one year and a fine of \$6,000.

While employees can freely participate in political activities, *Ala. Code § 17-1-4(b)* places severe restrictions on county employees seeking public office by requiring that a county employee who qualifies to run for a county office take an unpaid leave of absence from his or her employment.² The employee may use accrued overtime or annual leave, but once that leave is exhausted, he or she must be on unpaid leave while a candidate for the office. Any employee who violates this provision forfeits his or her employment. *Ala. Code § 17-1-4(b)* does not apply to elected officials or when a county employee is running for a state or municipal office.

Pursuant to *Ala. Code § 17-1-4(b)*, the employee must be on leave from the date he or she qualifies to run for office until one of the following occurs:

² This section also requires municipal employees to take a leave of absence when running for a municipal office.

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- The election results are certified; *or*
- The employee is no longer a candidate; *or*
- There are no other candidates on the ballot.

Since a deputy is considered an arm of the sheriff who is a constitutional officer, this requirement does not apply to a deputy running for local office. *See e.g. AG's Opinion ## 2006-072 and 2002-016.* However, the sheriff may require the deputy to take leave.

Ala. Code § 17-1-5 allows all government employees one hour off work for voting purposes unless the employee's work hours commence at least two hours after the polls open or end at least one hour before the polls close.

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CHAPTER VII

FINANCIAL ADMINISTRATION

A. ESTABLISHING AND MAINTAINING THE BUDGET

1. County General Fund Budget Requirements

Ala. Code § 11-8-1 provides that the county's fiscal year "shall begin October 1 and shall end September 30 following." *Ala. Code § 11-8-3(a)* requires that the county commission "at some meeting in September of each calendar year, but not later than October 1 prepare and adopt a budget for the fiscal year beginning on October 1 of the current calendar year". The budget shall include each of the following:

1. An estimate of the anticipated county revenues for all public funds under the county commission's supervision and control.
 - This includes all unexpended balances.¹
2. An estimate of expenditures for county operations.
3. Appropriations for county functions the county commission is required to fund.

The budget must be balanced, meaning that it "shall not exceed the estimated total revenue of the county available for appropriations." *Ala. Code § 11-8-3(b)*. Additionally, once the budget has been adopted, obligations incurred by a county official or employee above amounts included in their budget allocations shall not be an obligation of the county unless approved by a majority vote of the members of the county commission. *Ala. Code § 11-8-3(f)*.

¹ *Ala. Code § 11-8-6* requires that unexpended balances from the previous fiscal year remain in the respective funds for the succeeding year, and shall constitute a part of the income available for that fiscal year.

2. Required and Authorized Expenditures

Counties in Alabama may only appropriate funds for such purposes as are required or authorized by law. *Ala. Code § 11-8-3(c)* requires that the county's adopted budget include reasonable expenditures for the operation of the offices of the judge of probate, tax officials, sheriff, county treasurer, the county jail, the county courthouse, and other offices as required by law. There are other statutorily-required expenditures that must be included in the county's budget. While it would be impossible to list all items that must be included in the budget, a sampling of required expenditures is set out below:

- *Ala. Code § 11-3-11(a)(1)* requires the county commission to provide for the courts and other offices required to be in the courthouse.
- *Ala. Code § 11-12-13* requires the county commission to provide utilities to all courthouse offices.
- *Ala. Code § 11-12-14* requires the county commission to provide reasonable expenses for the office needs of various county officials.
- *Ala. Code § 36-22-18* requires the county commission to furnish the sheriff with necessary office space and supplies, including automobiles.
- *Ala. Code § 40-4-8 and § 40-6A-5* have similar provisions regarding the offices of tax officials.
- *Ala. Code § 16-9-24* requires the county commission to provide office space and supplies to the county superintendent of education and his or her staff.
- *Ala. Code § 3-7A-7* requires the county commission to provide a suitable county pound and impounding officer for animals running at large.

Financial Administration

- *Ala. Code § 38-8-2* requires the county commission to pay necessary burial expenses for persons who die with no estate and no relatives in the county able to pay those expenses.
- *Ala. Code § 22-21-291 et seq.* requires the county commission to pay for the medical treatment of indigent citizens of the county under certain circumstances.²

There is also some statutory authority authorizing discretionary expenditures from county revenues. It is imperative that the county commission determine that there is a legal basis for all expenditures included in the county's budget. Some examples of authority for discretionary spending are listed below, but again, this list is certainly not exhaustive:

- *Ala. Code § 11-1-10* authorizes agreements with other governmental entities to receive or pay out funds for the promotion of industrial, agricultural, recreational, or any other beneficial development.
- *Ala. Code § 11-1-11* authorizes the county commission to pay all dues, fees, and expenses incurred by local officials for membership in and/or attendance at official functions of their state organizations.
- *Ala. Code § 36-22-19* authorizes the county commission to pay the sheriff's dues in state and national sheriffs' associations.
- *Ala. Code § 11-1-15* authorizes the county commission to expend necessary funds for participation in national and state county commission associations.

² See in particular, *Ala. Code § 22-21-193* requiring payment for treatment of indigent citizens at out-of-county regional referral hospitals.

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- *Ala. Code § 11-1-9(a)* authorizes the county commission to pay the costs of defending lawsuits against county officials when based upon the official's performance in office and not a willful or wanton personal tort or criminal offense.
- *Ala. Code § 11-3-11(a)(21)* authorizes the county commission to use county equipment and funds for improvement, beautification, or decoration of county schools.
- *Ala. Code § 9-3-18* authorizes the county commission to donate money, property, equipment, etc. to volunteer fire departments and rescue squads.
- *Ala. Code § 11-3-11(a)(19)* authorizes the county commission to provide funds, labor, and/or equipment for agricultural and industrial development purposes.
- *Ala. Code § 11-25-1 et seq.* authorizes the county commission to establish, fund, and maintain a county law library.
- *Ala. Code § 11-90-1 et seq.* authorizes the county commission to establish, fund, and maintain public libraries.

3. Preparing the Budget

Ala. Code § 11-8-3 sets out procedures and requirements for establishing the county budget designed to ensure the commission can properly prepare for meeting the deadline to adopt the budget by October 1.³ To this end, *Ala. Code § 11-8-3(d)* requires that the county commission be provided certain information needed to develop the budget no later than 60 days prior to the meeting at

³ The Association of County Commissions of Alabama has developed a suggested Budget Preparation Schedule that can be found in the [Alabama County Finance Manual](#).

which the budget will be adopted. In particular, this Code section provides as follows:

1. All county officials receiving public funds must submit an estimate of revenues and expenditures for the next fiscal year;
2. All county officials and employees named by the county commission (such as department heads) must submit an itemized estimate of financial needs for the next fiscal year; and
3. Any official entitled to any ex officio fees must include in his or her report, the anticipated amount to be received from such fees.

4. Amending the Budget

Ala. Code § 11-8-3(g) provides that the county commission may amend the adopted budget during the fiscal year; however, doing so requires an ***affirmative vote of a majority of the members of the county commission***. The budget cannot be amended to authorize any expenditure exceeding anticipated county revenues, except where specifically authorized by law.

As noted above, there is one important provision of law related to the county budget that protects the county commission from incurring expenses not provided for in the budget. *Ala. Code § 11-8-3(f)* provides that once the budget has been adopted, obligations incurred by a county official or employee above amounts included in their budget allocations shall ***not*** be an obligation of the county ***unless approved by a majority vote of the members of the county commission***.

B. PAYMENT OF CLAIMS AND DISBURSEMENT OF COUNTY FUNDS

1. County Depository

While Alabama law still provides for a county treasurer, most counties utilize a county depository in lieu of a treasurer as authorized in *Ala. Code § 11-4-40*. This section allows the county commission to select a county depository at any point during the year. Counties are not required to bid each year, but they must obtain proposals to identify the depository offering the highest interest rate at the time. *Ala. Code § 11-4-41*. The depository must be a “qualified public depository” under Alabama’s SAFE Program. *Ala. Code § 41-14A-1 et seq.*⁴ Counties should select the qualified public depository or qualified public depositories that offer the highest rate of interest to the county on daily balances of bank deposits.

Ala. Code § 11-4-44 provides that the county depository shall not receive any compensation, commission, or allowances for services performed as county depository. This means the bank or other financial institution utilized by the county cannot charge the county any fees for services.

2. Payment of Warrants or Checks

Unless otherwise provided by law, no county warrant or check shall be issued by any person except as authorized by the chair of the county commission or such other officer as may be designated by the county commission.⁵ *Ala. Code § 11-8-9*. Under *Ala. Code § 11-8-10*, no warrant or order for the payment of money shall be issued by the county commission until the funds are available for its payment. Officers authorized to pay claims which have not first

⁴ All public funds deposited in Alabama must meet the requirements of the SAFE program which is designed to provide a uniform program for the security of public funds deposited with financial institutions in the State of Alabama that qualify to serve as depositories for public funds.

⁵ As discussed elsewhere in this Handbook, the county’s chief administrative officer may be charged with executing many of the duties related to review, audit, and payment of county claims. See *Chapter X* and *Ala. Code § 11-3-18*.

been approved by the county commission must issue warrants or checks in accordance with procedures established by the county commission. *See Ala. Code §§ 11-8-9 and 11-8-10.*

Ala. Code § 11-12-10 requires that the county commission chair or other officer authorized to draw county warrants independently “inspect and review each claim presented for payment from the public funds of the county, irrespective of whether such claim has previously been audited and allowed by the county commission”. This review must include a determination of whether or not the expenditure of public money for the claim is authorized by law and whether or not public funds of the county may be expended for the purpose or purposes of the claim. If the officer determines that any claim or claims may not lawfully be made from the public funds of the county, he or she shall refuse to sign or draw the warrant and if he or she does draw a warrant for payment of a claim not legally payable from county funds, he or she becomes personally liable, along with the other members of the county commission. *See Ala. Code §§ 11-12-11 and 11-12-12.*

Ala. Code § 11-8-15 provides that where there is an emergency over which the county commission has no control that results in any appreciable obligation against the county over and above that which it had anticipated, and for which no moneys from the current year's income are available to pay, the commission may issue interest-bearing warrants in an amount sufficient to defray the emergency operation. Under this Code section, the maturities of principal and interest of these emergency loans must be taken into consideration in the preparation of the budget for the year in which they mature and no such emergency loan may be made unless the county commission investigates and determines that an emergency has actually arisen and records its findings in its minutes.

3. Claims and Preference of Claims

Pursuant to *Ala. Code § 11-12-5*, all claims against the county, except claims that are fixed and made certain by law, must be itemized by the claimant or some other person having knowledge of the facts, and must be presented to the county commission for

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audit and allowance by that body. All claims must be audited by the county commission. *Ala. Code § 11-12-4*. And as noted above, under *Ala. Code § 11-8-10*, no claims can be paid unless the funds are available.

Ala. Code § 11-12-8 provides that all claims against counties must be presented for allowance within 12 months after the time they accrue or become payable or the claim is barred. In essence, this means that any person alleging or believing that the county owes him or her money must put the county on notice within 12 months of when he or she believes the claim or debt became due. This is a very broad and important protection for counties and should always be considered when claims are presented to the county commission for payment – or when suit against the county is filed or threatened.

Alabama's general law prescribes an order of preference in which claims against the county are to be paid. *Ala. Code § 11-12-15*. In summary, this section sets out the following priorities:

1. Costs of the jail, insurance premiums on county buildings, and premiums on surety bonds for county officials.
2. Compensation for county officials.
3. Claims for office supplies for county officials.
4. Appropriations to county extension offices.
5. Interest on bonds.

4. Constitutionally-Prohibited Expenditures

In addition to the statutory provisions mandating or authorizing expenditures of county funds, there are constitutional provisions which prohibit certain expenditures by the county commission or other governing bodies.

Ala. Const. § 94, as amended by Amendment 112, includes a strict prohibition against the county performing work on private property or otherwise granting any “public money or thing of value in aid of” any private interest. This constitutional prohibition is the basis for the long-held view that counties are prohibited from expending public monies, time, or materials for any private individual, enterprise, or property. The attorney general’s office regularly issues opinions offering counties and other state and local governmental entities guidance on proper application of this important constitutional prohibition.

There have been recognized exceptions to this provision because of a special circumstance, such as where it can be shown that there is a genuine benefit to the county and/or public, but each exception should be very narrowly applied and there must generally be some statutory basis for the expenditure of public funds. *See e.g. AG’s Opinion ## 2013-005 and 2012-044*. The Supreme Court of Alabama has held that public entities may donate public money or other things of value where there is a “public purpose” which has as its objective the promotion of public health, safety, morals, security, prosperity, contentment, and the general welfare of the community. *See Slawson v. Alabama Forestry Commission*, 631 So.2d 953 (Ala. 1994). The test should be whether the expenditure confers a direct public benefit of a reasonably general character (i.e. a significant part of the public).

5. Use of Credit or Debit Cards for County Purchases

There is no blanket authority for counties to make purchases with credit or debit cards. However, a law passed in 2013 does allow for the county to make certain purchases with a credit or debit card under the procedures and requirements set out in the law. *See Ala. Acts No. 2013-211, codified at Ala. Code § 11-3-60 et seq.* Under this law, the use of credit cards is authorized for certain purchases, but only if the county commission adopts credit card procedures

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that comply with the law.⁶ Under *Ala. Code § 11-3-60(b)*, the county commission must establish a monetary limit for individual purchases and for total monthly purchases. This Code section also provides that the county's chief administrative officer is the only person authorized to actually make purchases using the card.

The 2013 Act also includes procedures that allow the county commission to adopt a procurement or purchasing program designed to simplify the purchasing of certain tangible personal property. *Ala. Code § 11-3-61*. Again, the county is required to establish procedures for operation of the program that comply with the requirements of the law. A "procurement or purchasing program" is defined in the law as "a purchase payment program utilized as an alternative purchase order process with vendors agreeing to participate in such process." *Ala. Code § 11-3-61(a)*.

In addition to the above, *Ala. Code § 36-7-1* has been interpreted by the Alabama Department of Examiners of Public Accounts to allow for the use of credit cards for the payment of travel expenses incurred by a county official or employee. However, this credit card use has been limited to payment of travel expenses only.

C. FINANCIAL ACCOUNTING, REPORTING, AND AUDIT

1. Accounting

Once the budget is adopted, the actual financial operations for the period covered by the budget must be recorded, summarized, and analyzed. This function typically falls under the duties or supervision of the county's chief administrative officer (sometimes called the county administrator) and must be conducted in accordance with guidelines and principles adopted by the Governmental Accounting Standards Board (GASB). The Alabama

⁶ The Association of County Commissions of Alabama has developed model credit card procedures that the Department of Examiners of Public Accounts has determined meet the requirements of the law. These procedures are available through the Association's website at www.alabamacounties.org.

County Finance Manual, first adopted by the Department of Examiners of Public Accounts in 1980 and periodically updated as necessary, is an excellent guide for counties to follow in complying with accounting and financial reporting requirements.⁷

2. Financial Reporting

Ala. Code § 11-3-21 requires that, as soon as practical after closing the fiscal year but no later than December 31 of each year, the county must publish a financial statement for the 12-month period ending on September 30 of that year. The statement shall be published in a newspaper of general circulation in the county and must include at a minimum each of the following:

1. An itemized report of the county's receipts by source and disbursements by functions or purposes or both;
2. The outstanding indebtedness of the county of any kind or character;
3. The schedule by years for retiring indebtedness, separating funded indebtedness from unfunded indebtedness; and
4. The resources available to pay unfunded indebtedness.

The district attorney may bring a civil action to compel compliance in the event the county fails to publish this statement. *Ala. Code § 11-3-22*. The court may assess all costs of court to the county.

In addition to the local reports, the law also requires the state reporting of county financial statistics. The Alabama Department of Examiners of Public Accounts is required to furnish the county commission chair with an annual fiscal statement of the county, showing its receipts, disbursements, outstanding indebtedness, and securities owned. *Ala. Code § 41-5-6*.

⁷ At the time of publication of this Handbook, the most recent edition of this Manual was the 2008 edition.

3. Audit of Accounts

Ala. Code § 41-5-4 requires the Department of Examiners of Public Accounts to audit the books, records, vouchers, and accounts of all county offices once in every two year period. The audits may occur more frequently or continuously “if that is deemed necessary or desirable by the Chief Examiner”. *See also Ala. Code § 41-5-6*. In addition, *Ala. Code § 41-5-6(13)* provides that the chief examiner has the power and duty to prepare and furnish the chair of the county commission a fiscal statement of the county, as of the end of each fiscal year, showing receipts, disbursements, outstanding indebtedness and securities owned by the county.

The audits performed pursuant to *Ala. Code § 41-5-4* are conducted at the expense of the state and include not only an audit of financial records, but of the county’s “legal compliance” with Alabama’s constitution and state and local laws. In addition to these audits, the Department of Examiners of Public Accounts typically conducts “federal audits” as required where counties are expending federal funds pursuant to a grant or contract. These audits are paid for by the counties.

Upon preparation of a draft audit report following an audit, the Department of Examiners of Public Accounts holds an exit conference with members of the county commission to present the results of the examination and provide an opportunity for the county to produce additional information that may affect the report. This exit conference is not subject to the notice and public meeting requirements of the Open Meetings Law because *Ala. Code § 36-25A-2(6)b.2* excludes from the definition of “meeting” occasions when a quorum of a governmental body “gathers, in person or by electronic communication, with state or federal officials for the purpose of reporting or obtaining information”. The final audit report, however, is public record and will be posted on the Examiners’ website and made available to members of the public upon request.

D. CONSTITUTIONAL PROTECTIONS OF COUNTY REVENUES

1. Prohibition against Unfunded Mandates

*Ala. Const. Amend. 621 as amended by Ala. Const. Amendment § 890*⁸ provides county government some protection against state statutory and regulatory mandates that would require an expenditure of county revenues. The amendment provides that no general law or state executive order that requires a new or increased expenditure of funds from a county governing body shall become effective as to any county until one of the following occurs:

1. The measure is approved by an ordinance enacted, or a resolution adopted, by the affected county commission.
2. The Legislature appropriates funds for that purpose and only to the extent and amount that the funds are provided.
3. A law provides a local source of revenue for the stated purpose for the affected county.

The amendment, however, does not apply to the following:

1. Local laws;
2. An act defining a new crime or amending the definition of an existing crime;
3. Laws or orders adopted before the ratification of this amendment;
4. Laws adopted to comply with federal mandates;

⁸*Ala. Const. Amend. § 890* was ratified in 2014 to provide the same protections to local school boards.

5. Acts adopted by two-thirds of those voting in each house of the Legislature;
6. Acts that have an aggregate insignificant fiscal impact of less than \$50,000 annually; and
7. Acts prescribing minimum compensation of officials.

2. Effective Date for Increased Expenditures of County Revenues

Ala. Const. Amend. 474 provides that any Alabama law which provides for new or increased expenditures of county funds is not effective until the first day of the fiscal year following the passage of the act, except when the law is approved by the county commission or when the law provides sufficient additional funding.

E. PURCHASING UNDER THE COMPETITIVE BID LAW

Under Alabama law, all governmental entities and agencies are required to competitively bid for certain purchases or leases of personal property, services and labor, or materials, equipment, or supplies when there is an expenditure of public funds involving \$15,000 or more. While the laws are similar, there are separate provisions applicable to state agencies, school boards, and county and municipal governmental entities. The competitive bid law applicable to most local governmental entities is found at *Ala. Code § 41-16-50 et seq.*⁹

The following is a very general overview of the provisions of the competitive bid law applicable to counties, and while the Supreme Court of Alabama has repeatedly held that the most important requirement of the competitive bid law is the good faith of the

⁹ The bid law applicable to state purchases is found at *Ala. Code § 41-16-20 et seq.* And the law for local school boards is found at *Ala. Code § 16-13B-1 et seq.*

officials charged in executing the law,¹⁰ it is imperative that county commissioners and county employees obtain a good working knowledge of the law and ensure that the county complies with the law when it is required for purchases being made by the county.

1. Applicable Purchases

Ala. Code § 41-16-50(a) requires that any contract for the purchase or lease of certain goods or services exceeding \$15,000 shall be awarded to the lowest responsible bidder following a bid offering wherein the awarding authority (such as the county commission) receives sealed bids in response to an invitation to bid distributed to potential bidders as provided in the law. In particular, *Ala. Code § 41-16-50(a)* requires bidding for the following purchases or leases involving an expenditure of public funds of \$15,000 or more:

- a. Labor, services, work;
- b. Purchase of materials, equipment, supplies, or other personal property; and
- c. Lease of materials, equipment, supplies, or other personal property where the lessee is, or becomes legally and contractually bound to pay \$15,000 or more.

The competitive bid law does not apply to the sale or lease of real property. See, *AG's Opinion # 88-323*. The competitive bid law also does not apply to public works contracts (i.e., contracts for construction, renovation, or repair of roads, bridges, buildings, or other structures). Those contracts are governed by the public works law found in *Title 39, Code of Alabama 1975*, and discussed in more detail later in this chapter.

Where there is no expenditure of public funds, the bid law does not apply, but once funds are transferred to a governmental entity, they become public funds. See *e.g. AG's Opinion # 2004-223*.

¹⁰ See *e.g. White v. McDonald Ford Tractor Co.*, 287 Ala. 77; 248 So.2d 121 (1971).

2. Exemptions

Ala. Code § 41-16-51(b) exempts certain purchases from *all* provisions of the competitive bid law. Most of these are not applicable to counties. However, there is also a laundry list of exemptions from the competitive bidding requirements found in *Ala. Code § 41-16-51(a)*, many of which do apply to the county commission. Some of the most relevant exemptions applicable to counties are set out below:

- Utility services, the rates for which are fixed by law, regulation, or ordinance.
- Professional services contracts.
- The purchase of insurance.
- Contracts for fiscal or financial advice or services.
- Existing solid waste collection, recycling, or disposal contracts up for renewal where there is no change in terms of the contract.
- Computer and word processing hardware where it is the only compatible type with that already owned by the entity.
- Custom computer software.
- Services or commodities for which there is only one vendor or supplier.
- Purchases of dirt, sand, or gravel by counties from in-county property owners to supply county road or bridge projects in which the materials will be used.
- Contractual services and purchases of personal property which by their very nature are impossible to award by competitive bidding.

- Purchases related to, or having an impact on, security plans or the security or safety of persons, structures, facilities, or infrastructures.

There is also a limited exception to the provisions of the bid law for the repair and/or lease of certain heavy-duty off-highway construction equipment with a gross vehicle rating of 25,000 pounds or greater. *Ala. Code § 41-16-52. Ala. Act No. 2017-466* raised the exemption from \$15,000 to \$22,500.

3. Purchasing Cooperatives and Alliances

Ala. Code § 41-16-51(a) includes several bidding exemptions for purchases of goods or services made from certain purchasing cooperatives or alliances, provided the special requirements for using the cooperatives set out in the exemption are met and the bidding process utilized by the purchasing cooperative has been approved by the Department of Examiners of Public Accounts. The exemptions do not apply to the purchase of wireless communication services. The following are permissible exemptions:

- *Ala. Code § 41-16-51(a)(16)* allows local governmental entities to make purchases from U.S. Communities, the purchasing cooperative sponsored by the National Association of Counties (NACo).
- *Ala. Code § 41-16-51(a)(16)* allows an exemption for purchases from certain other national or regional governmental cooperative purchasing programs under the same conditions as allowed for U.S. Communities.
- *Ala. Code § 41-16-51(a)(17)* allows local governmental entities to purchase goods or services from a Government Services Administration (GSA) contract.

As noted above, there are specific requirements that must be met for these exemptions to apply. Counties must check for

compliance with all rules prior to making purchases from any of these cooperatives or contracts.

4. Emergencies

Ala. Code § 41-16-53 provides that in case of an emergency affecting public health, safety, or convenience, contracts may be let ***without public advertisement*** to the extent necessary to meet the emergency. The emergency must be declared in writing by the awarding authority, setting forth the nature of the danger involved in delaying the award and the action and the reasons therefore shall immediately be made public by the awarding authority. This ***does not*** eliminate the need to competitively bid or follow the other requirements of the law – it simply allows putting the item out for bid without public advertisement.

In addition to this provision, *Ala. Code § 31-9-10* requires the county to establish a local emergency management organization and grants special powers and authority in a disaster.¹¹ *Ala. Code § 31-9-10(b)(5)*, provides that, in the event of a disaster as described in *Ala. Code § 31-9-2*, the governing body can “waive procedure and formalities otherwise required by law” for public works projects, contracts, etc. *Ala. Code § 31-9-10(c)(1)* allows the chair of a county commission to execute a resolution declaring emergency conditions exist in his or her county if the Governor or the Legislature has declared a state of emergency.

5. Contracts and Purchases between Governmental Entities

Although this issue is not specifically addressed in the competitive bid law, the attorney general has consistently held that the competitive bid law does not apply to contracts for goods or services between governmental entities of the state, including counties and municipalities. *See e.g. AG’s Opinion ## 2011-007; 2008-093; 96-271 and 91-131. See also Ala. Code § 11-1-10*, which allows counties to contract with state, federal, and municipal governments.

¹¹ See Chapter X for further discussion of the county emergency management agency.

The governing bodies of two or more local entities may also enter into a joint purchasing agreement for materials, equipment, and supplies under *Ala. Code § 41-16-50(b)*.¹² The agreement may provide that one of the agencies will serve as a joint purchasing or bidding agent to physically purchase and obtain items from the vendor for all of the agencies and that the remaining agencies will obtain their share from and reimburse the purchasing agency.

The attorney general has also held that counties and other local governmental entities may purchase off the state bid list without competitively bidding if the purchase is made from the vendor to whom the state awarded the contract and the state bid included political subdivisions and instrumentalities on the state bid. *See e.g. AG's Opinion # 2011-011*.

6. The Competitive Bid Process

The competitive bidding process required under Alabama's bid law begins with the preparation of bid specifications setting out what items or services are sought by the awarding authority. The law does not include specific language regarding what should be included in the bid specifications. However, the courts and the attorney general's office have rendered many opinions that offer guidance in what can and cannot be included in the bid specifications. It is important to note that, since the competitive bid law requires that award be made to the lowest responsible bidder, a "request for proposal" allowing for negotiation with bidders on specific details of a bid cannot be utilized in place of bid specifications for items or services subject to competitive bid. *See AG's Opinion # 2013-012*.

The awarding authority sets the date, time and place for bid opening and must then advertise the opening as set out in *Ala. Code § 41-16-54(a)*. The awarding authority can establish reasonable time frames for bidders to submit sealed bids. *Ala.*

¹² This is the authority under which the Alabama County Joint Bid Program administered by the Association of County Commissions of Alabama on behalf of all 67 counties was created in 2000, discussed in more detail below.

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Code § 41-16-54(a). There is no requirement that bids be opened during a county commission meeting.

Ala. Code § 41-16-54(b) requires that all bids be sealed when received by the awarding authority. All bids are opened during the scheduled bid opening and should thereafter be carefully reviewed to determine compliance with the bid specifications and the lowest responsible bidder. The contract shall be awarded to the lowest responsible bidder meeting the bid specifications. *See Ala. Code § 41-16-57(a).* This is not necessarily the lowest bidder. There is no requirement that a contract be awarded if it is determined that none of the bids meet specifications or if the prices submitted are excessive. *See Ala. Code § 41-16-57(c).*

There are no specific statutory guidelines on compliance with bid specifications but again, there are cases and attorney general's opinions providing guidance to the awarding authority. *Ala. Code § 41-16-57(a)*, however, does provide that, in determining the lowest responsible bidder, the awarding authority may consider each of the following:

- The qualities of the commodities proposed to be supplied.
- Their conformity with specifications.
- The purposes for which required.
- The terms of delivery.
- Transportation charges.
- Dates of delivery.

7. Local Preferences

The competitive bid law includes several provisions that allow the county or other awarding authority to give preference to local vendors or to commodities produced or sold in Alabama. *See Ala. Code §§ 41-16-50(a) and 41-16-57(b).*

Under *Ala. Code § 41-16-50(a)*, the awarding authority may award a contract for goods or services to a local business whose bid comes within five percent (5%) of the lowest responsible bidder. Under *Ala. Code § 41-16-50(d)*, there are also certain “in-state” preferences that can be utilized when the lowest responsible bidder is a “foreign entity”, meaning that the company does not have a place of business within the state. Granting a local preference is optional at the discretion of the county commission.

8. Public Inspection

Ala. Code § 41-16-57(d) requires that each record regarding the award of the contract shall be open to inspection. The record shall indicate the successful bidder, and state the reasons for the award if not made to the lowest bidder.

9. Contract Term Limitations

Contracts for the purchase of personal property or contractual services subject to competitive bid shall not be for periods greater than three years. *Ala. Code § 41-16-57(e)*. Lease purchase contracts may be for periods not greater than ten years.

10. Violation of Competitive Bid Law

Ala. Code § 41-16-51(d) provides that anyone who violates the competitive bid law shall be guilty of a Class C felony, which is punishable by a sentence of one to ten years and/or up to a \$5,000 fine. Additionally, any contract entered into in violation of the competitive bid law is void.

11. Available Legal Actions

Any unsuccessful bidder or taxpayer within the jurisdiction of the awarding authority (a resident of the county) may bring a civil action to enjoin the execution of a contract entered into in violation

of the competitive bid law. *Ala. Code § 41-16-61*. However, an unsuccessful bidder cannot bring an action to enjoin the awarding authority from rejecting all bids and rebidding the contract or to compel the awarding authority to award him or her the contract. *Vinson Guard Service, Inc. v. Retirement Systems of Alabama*, 836 So.2d 807(Ala. 2002). Additionally, the Supreme Court and the attorney general's office have held that legal action *cannot* be brought for compensatory damages (such as loss of profits) under the competitive bid law. See e.g. *Jenkins, Weber & Associates v. Hewitt*, 565 So.2d 616 (Ala. 1990); *Crest Construction Corp. v. Shelby County Board of Education*, 612 So.2d 425 (Ala.1992); AG's Opinion # 93-297.

F. ALABAMA COUNTY JOINT BID PROGRAM

As previously noted, *Ala. Code § 41-16-50(b)* allows two or more local governing bodies to enter into a joint agreement between the separate entities for the bidding and/or purchase of labor, services, or work or for the purchase or lease of materials, equipment, supplies, or other personal property. All provisions of the competitive bid law must be followed by the entities participating in the agreement.

Utilizing this authority, the Association of County Commissions of Alabama administers the Alabama County Joint Bid Program, whereby bids are let on behalf of all Alabama counties for items such as heavy equipment, herbicides, and road signs. There is also a program for debris removal and debris removal monitoring services.¹³ This program has operated continuously since 2000 and has served counties extremely well by eliminating much of the county level administrative work involved in placing items out for competitive bid. Additionally, the collective bidding for all counties has generally resulted in lower prices than counties often obtain from individual bidding, allowing counties to purchase high quality equipment, materials, and services at competitive prices.

¹³ More information on the Alabama County Joint Bid Program can be obtained from the Association's website at www.alabamacounties.org.

The bid process utilized by the Association complies in all respects with the Alabama competitive bid law as required in *Ala. Code § 41-16-50(b)*. The program is completely voluntary on the part of Alabama counties. All counties have passed a resolution to participate in the county joint bid program. However, there is no requirement that a county purchase items on the county joint bid list – even if they want to purchase items that appear on the list.

G. GOVERNMENTAL LEASING

Ala. Code § 41-16A-2 is a declaration by the Alabama Legislature that it is in the public interest to have flexibility to finance the acquisition, installation, equipping, and/or improvement of certain property through the use of lease, lease-purchase, or installment-purchase financing. To this end, *Ala. Code § 41-16A-1 et seq.* provides for “alternative financing” for purchases of eligible property by governmental entities in the state.

Ala. Code § 41-16A-4 provides that any governmental entity may execute, perform, and authorize payments under any alternative financing contract it deems necessary, useful, or appropriate to one or more lawful purposes of the governmental entity. Eligible property for alternative financing contracts is defined in *Ala. Code § 41-16A-3(d)* as, “Any tangible personal property, or any interest therein, including without limitation any goods, supplies, materials, appliances, equipment, furnishings, and/or machinery, whether or not such items constitute fixtures.” Any alternative financing contract may provide financing or a source of funds for any or all costs of acquiring, installing, equipping, and/or improving any eligible property and for any or all associated costs, fees, and expenses. *Ala. Code § 41-16A-4*.

This statute has very broad contracting powers, and specifically states that it is to be liberally construed to achieve the goal of allowing governmental entities to enter into lease or lease purchase agreements for personal property. *Ala. Code § 41-16A-5*. However, this law does **not** create an exception to the competitive bid law.

H. PUBLIC WORKS CONTRACTS

Alabama's Public Works Law, found in *Title 39 of the Code of Alabama 1975*, addresses the bidding requirements and process for construction projects where the contract is awarded by state or local governmental entities, including counties. *See Ala. Code § 39-2-1(1)* for the definition of "awarding authority" under the law. Many of the provisions of the public works law are similar or identical to the provisions found in the competitive bid law. The rules for bidding and contracting for public works projects, however, are in many respects more restrictive and burdensome than those for purchases made under the competitive bid law.

1. Applicability

The public works law applies to any public works project in excess of \$50,000 involving the expenditure of public funds. *Ala. Code § 39-2-2*. "Public works" is broadly defined in *Ala. Code § 39-2-1(6)* as follows:

The construction, installation, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, curbs, gutters, side walls, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, installed, repaired, renovated, or maintained on public property and to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise.

Any public works contract of less than \$50,000 can be let with or without bidding. However, no public works contract shall be split into parts involving \$50,000 or less for the purpose of evading the public works law. *See Ala. Code § 39-2-2*. The competitive bid law does not generally apply in a public works project. *See Ala. Code § 41-16-50*.

2. The Bidding Process

The competitive bid process under the public works law is similar to that found in the competitive bid law, but with more structure and specific requirements. As with the competitive bid law, the process begins with the preparation of bid specifications setting out the details of the project and the awarding authority sets a date, time and place for bid opening. There are specific rules for advertising the invitation to bid. *Ala. Code § 39-2-2 (a)* requires that the awarding authority advertise for sealed bids once each week for three consecutive weeks in a paper of general circulation in the county, and that for contracts in excess of \$500,000, the project be advertised at least once in three newspapers of general circulation throughout state. *Ala. Code §§ 39-2-2 and 39-3-5* address more specifically when advertising is required and what information that must be included in the advertisement.

The public works law does not in general set out specific requirements for what should be included in the bid specifications or how to determine whether bids submitted meet the bid specifications. There is no provision contemplating “request for proposals” in soliciting bids for a public works project, meaning that public works projects should always be awarded based upon determination of the lowest responsible and responsive bidder meeting bid specifications. *See e.g. AG’s Opinion # 2013-012*. The public works law does have detailed procedures for making bid specifications available to potential bidders set out in *Ala. Code § 39-2-3*, and requires all bidders to submit a check or bid bond in an amount not less than 5% of the estimated cost of the contract with their bid. *Ala. Code § 39-2-4(a)*.

3. Prequalification¹⁴

The public works law authorizes an awarding authority to “prequalify” bidders prior to soliciting bids for a project if it has established written prequalification procedures and criteria that meet the requirements of the statute. *Ala. Code § 39-2-4*. Pursuant to *Ala. Code § 39-2-4(d)*, any bidder who has been prequalified

¹⁴These procedures do not apply to the Alabama Department of Transportation which has its own statutory prequalification procedures. *Ala. Code § 39-2-4(b)*.

shall be deemed “responsible” for purposes of the contract award unless prequalification is revoked by the awarding authority. Prequalification of bidders is not required under the law, and where utilized, does not ensure a bidder that he or she will be awarded the contract.

4. Emergencies

The public works law includes a provision that in an emergency “affecting public health, safety, or convenience”, contracts may be let to the extent necessary to meet the emergency ***without advertisement***. *Ala. Code § 39-2-2(e)*. This is identical to the emergency provision in the competitive bid law, meaning that it is an ***exemption from advertising*** and ***not*** from competitively bidding the project. The emergency must be declared in writing by the awarding authority, setting forth the nature of the danger involved in delaying award of the contract and the action and reason shall immediately be made public by the awarding authority.

5. Contract Award

Following review of all bids received, the contract shall be awarded to the lowest responsible and responsive bidder unless the awarding authority finds that all bids are unreasonable or that it is not in the awarding authority’s interest to accept any of the bids. *Ala. Code § 39-2-6(a)*. Under this Code section, a “responsible bidder” is “one who, among other qualities determined necessary for performance, is competent, experienced, and financially able to perform the contract” and a “responsive bidder” is “one who submits a bid that complies with the terms and conditions of the invitation for bids.” If no award is made within 30 days of the bid opening, all bids shall be rejected and all guaranties shall be returned except for any potentially successful bidder who agrees in writing to a stipulated extension in time for consideration of the bid. *Ala. Code § 39-2-5*.

If no bid or only one bid is received, the awarding authority may advertise for and seek other competitive bids, direct that work be done by force account under its direction and control, or negotiate

work through informal bids not subject to bid requirements. *See Ala. Code § 39-2-6.* Where only one responsible and responsive bid is received, any negotiation must be for a price lower than that bid. “Force account work” is defined in *Ala. Code § 39-2-1(2)* as “Work paid for by reimbursing for the actual costs for labor, materials, and equipment usage incurred in the performance of the work, as directed, including a percentage for overhead and profit, where appropriate.”

Once the contract has been awarded, both the awarding authority and successful bidder are required to take certain steps to execute the contract and proceed with the project. For example, the awarding authority must generally approve bonds and evidence of insurance and complete execution of the contract within 20 days of making the award and, unless there is an agreement otherwise, it shall issue a proceed order within 15 days after final execution of contract. *See Ala. Code §§ 39-2-9 to 39-2-11.* Additionally, the awarding authority must certify that the contract was awarded in compliance with the law prior to the execution of final contracts and bonds. *Ala. Code § 39-5-1(b).* Pursuant to *Ala. Code § 39-2-8*, the successful bidder must, within 15 days of being awarded the bid, enter into a contract, furnish a performance bond for the contract, furnish a payment bond for labor and materials, and provide evidence of insurance.

6. Advertisement upon Project Completion

The public works law requires advertisement upon completion of a project, which must occur prior to final payment for the project. *Ala. Code § 39-1-1(f).* For contracts of \$50,000 or more, the contractor must give notice of completion of a project by advertising in a newspaper of general circulation published within the city or county where the work has been done for four consecutive weeks. For contracts of less than \$50,000, the awarding authority (rather than the contractor) is required to give notice of completion by publishing once in a newspaper of general circulation in the county and posting notice on the agency’s bulletin board for one week.

7. Payment Options and Procedures

Unlike the competitive bid law, the public works law has very specific rules and procedures for payment by the awarding authority, both during the project and upon completion. *See Ala. Code § 39-2-12*. Partial and final payments on a project must generally be made within 35 days after work has been completed and accepted or interest is charged. There are specific procedures for review and approval of all invoices. Special rules apply for projects funded by grants.

In addition to the payment procedures, the public works law requires the awarding authority to include a statement regarding the availability of funds for payment of the project in the contract executed with the successful bidder. *Ala. Code § 39-2-12(k)*. This statement shall outline the funding source for the contract, including whether the funds are held by the awarding authority at the time the contract is executed or whether they will become available following execution of the contract.

8. Exemptions and Exclusions

Ala. Code § 39-2-2(d) exempts contracts with persons performing only architectural, engineering, construction management, or project management services from the public works law. Additionally, the law exempts from the definition of an “awarding authority” any entity exempted by statute from the competitive bid law. *Ala. Code § 39-2-1(1)*.

Ala. Code § 39-2-2(g) provides that certain contracts affecting homeland security may be let by informal bid and without public advertisement. The Homeland Security Director¹⁵ must acknowledge in writing that the proposed public works project has a direct impact on safety or security of persons and requires confidentiality.

¹⁵ As discussed in Chapter XI, the secretary of the Alabama Law Enforcement Agency now serves as the Homeland Security Director pursuant to *Ala. Code § 41-27-2 (d)*.

9. Violations of the Public Works Law

Ala. Code § 39-2-2(c) provides that any contract executed in violation of the public works law shall be null, void, and violative of public policy. This Code section also provides that any willful violation of the public works law is a Class C felony.

A bidder who was awarded a public works contract cannot bring a civil action to force the awarding authority to pay out public funds for work and labor, materials supplied, or performance of a contract if the contract was let or executed in violation of the law. *Ala. Code § 39-5-1.*

10. Available Legal Actions

The public works law authorizes civil actions brought by the attorney general or an interested citizen to recover public funds paid under a public works contract let in violation of law. *Ala. Code § 39-5-3.* The action must be brought within three years of final settlement of the contract.

Under *Ala. Code § 39-5-4*, an action to prevent letting a contract in violation of the public works law may be brought within 45 days of the award of the contract by the attorney general, a bona fide unsuccessful or disqualified bidder, or any interested citizen.

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CHAPTER VIII

REVENUE SOURCES FOR ALABAMA COUNTIES

A. LOCAL TAX REVENUE SOURCES

County revenues are generated from a variety of state and local revenue-raising measures. Taxes furnish the bulk of the revenues raised locally, with such other income as fines, fees, penalties, costs, and assessments contributing the remainder of revenue. With few exceptions, counties have no power to levy taxes or otherwise raise revenue without legislative authority. Therefore, they are largely dependent on revenues received from the distribution of shared taxes levied at the state level and local laws authorizing the levy of certain county taxes and fees.

1. Ad valorem Taxes

Ad valorem (or property) taxes provide an important revenue source for not only county government, but also for other local entities providing services within the county such as county schools, volunteer fire departments, county hospitals and health care facilities. Unfortunately, the process for the levy, assessment, and collection of ad valorem taxes is quite complicated and confusing. There are strict limitations placed on the county's ability to impose, alter, or vary an ad valorem tax levy. There are also several constitutional and statutory exemptions that result in the elimination or reduction of ad valorem taxes collected for the benefit of the county and the other programs relying on these tax proceeds.

Ala. Const., Amend. 373 governs the levy, assessment, and collection of ad valorem taxes in Alabama. This section and *Ala. Code § 40-8-1 et seq.*, (known as "The Lid Bill"), were enacted in the late 1970's to correct an inequality in the statewide assessment of taxable property. The constitutional and statutory provisions set out the procedures for levying the ad valorem taxes and for establishing or altering tax assessment ratios and tax rates. The

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law is applicable to taxes assessed and collected after October 1, 1979.

All ad valorem taxes in Alabama are assessed in “mills”, which is defined as a monetary unit equal to 1/10 of a cent. As discussed below, all taxable property is classified into one of four categories and taxed at a percentage of the fair market or current use value of the property based upon classification. *Ala. Code § 40-8-1*. There are other matters to consider in calculating the tax, such as whether there are any exemptions that apply, and if so, to what extent the property is exempt. There are also limits to how much tax may be assessed on any piece of property. Under *Ala. Const., Amend. 373*, counties and other taxing authorities may levy, increase, or decrease ad valorem tax rates only by passage of a local law and approval of the levy by a majority of voters at a referendum held in the county.

The total levy of ad valorem tax in any county will vary considerably depending on matters such as special local taxes, whether all tax levies permissible under the Constitution are, in fact, assessed, and whether any county adjustments in assessment ratios and tax rates have been made. Alabama's Constitution allows a maximum county tax rate of 24.1 mills, allocated as follows:

- Five mills for general purposes. *Ala. Const. § 215*.
- Two and one-half mills for roads, bridges, and public highways. *Ala. Const. § 215*.¹
- One mill for public schools. *Ala. Const. § 269, as amended by Amendment No. 111*.
- Three mills for public schools. *Ala. Const. Amend. 3*.²

¹ Under *Ala. Const. Amend. 208*, certain excess amounts of the funds derived from this tax may be used for general county purposes to be determined by the county commission.

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- Three mills for public schools levied by the school districts. *Ala. Const. Amend. 3.*
- One-tenth of one mill for hospital purposes, to be levied by all counties except Mobile and Montgomery. *Ala. Const. Amend. 59.*
- Four mills for hospital and public health purposes to be levied by all counties except Jefferson, Mobile, and Montgomery. *Ala. Const. Amend. 72.*
- Five mills for educational purposes. *Ala. Const. Amend. 202.*
- One-half of one mill for library purposes. *Ala. Const. Amend. 269.*

Many counties have passed local constitutional amendments allowing for the levy of property taxes at rates in excess of the generally prescribed 24.1 mills.

The county commission is charged with “setting” the tax levy in the county. *Ala. Code § 40-7-42.* Historically, this was to occur annually at the first meeting in February. The law was amended in 2014 and now provides that once the county commission has established the annual levy, those levies “shall be assessed and collected in all subsequent tax years unless altered by the county commission in compliance with a change in the tax rate by general law not later than the last day of February prior to the effective date of the change in tax rate.” *See Ala. Acts No. 2014-433 amending Ala. Code § 40-7-42.*

Ala. Const. Amend. 373 provides that all taxable property in the state which is not exempt by law shall be divided into classes for

² *Ala. Const. Amend. 382* authorizes an additional levy for school districts if approved by referendum.

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ad valorem taxation purposes and establishes the classes and assessment ratios for each class of property. *Ala. Code § 40-8-1* also states that all taxable property shall be divided into one of these classes and except as otherwise provided, all property shall be assessed for ad valorem tax purposes at the statutory ratios “of assessed value to the fair and reasonable market value of such property”. The classes of property outlined in *Ala. Const. Amend. 373* and *Ala. Code § 40-8-1* are as follows:

- Class I All property of utilities used in the business of such utilities
- Class II All property not otherwise classified
- Class III All agricultural, forest, and residential property and historic buildings and sites
- Class IV All private passenger automobiles and pickup trucks owned and operated by an individual for personal or private use and not for hire, rent, or compensation

The assessment ratios for each class of property are:

- Class I 30% of the assessed value to the fair market value of such property
- Class II 20% of the assessed value to the fair market value of such property
- Class III 10% of the assessed value to the fair market value of such property or current use value
- Class IV 15% of the assessed value to the fair market value of such property

Ala. Const. Amend. 373(i) provides that, except as otherwise provided in the Constitution, the total amount of ad valorem taxes

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payable to the state and to all counties, municipalities, and other taxing authorities shall never exceed the following in any one tax year:

1. 2% of the fair market value of Class I property
2. 1½% of the fair market value of Class II property
3. 1% of the fair market value of Class III property
4. 1¼% of the fair market value of Class IV property

The Legislature has attempted to define the property tax base by enumerating particular real and personal property subject to taxation. *See Ala. Code § 40-11-1*. The property tax is a general tax that applies to all property that is not specifically exempted. There are, however, many exemptions set out in the constitution and general laws of the state. *Ala. Const. Amend. 373* exempts “the real and personal property of the state, counties and municipalities and property devoted exclusively to religious, educational or charitable purposes, household and kitchen furniture, all farm tractors, all farming implements when used exclusively in connection with agricultural property and all stocks of goods, wares and merchandise.” Legislative exemptions from ad valorem taxes are found generally in *Ala. Code § 40-9-1 et seq.* *Ala. Code § 40-9-12* declares various social service organizations, like the United Way, exempt and defines the elements of an appeal fund that would be exempt. The homestead exemption is found in *Ala. Code § 40-9-19*. *See also Ala. Const. § 205*. *Ala. Code § 40-9-21* addresses exemptions for disabled persons and certain persons 65 years of age or older.

The county tax officials are charged with the responsibility for the assessment, collection, and distribution of all ad valorem taxes. *See generally Ala. Code §§ 40-5-1 et seq., 40-7-1 et seq., and 40-11-1 et seq.* Additionally, these county officials are responsible for enforcing the property tax laws and when necessary and appropriate, conducting tax sales of property on which ad valorem taxes have not been paid. *See generally Ala. Code § 40-10-1 et*

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seq. When a person seeks to redeem property sold for unpaid taxes, he or she must pay the unpaid taxes plus interest at a rate of eight percent. *See, e.g., Ala. Code § 40-10-75.* Redeemers can take possession of the property prior to reimbursing the purchaser for allowable improvements and insurance premiums, but the reimbursement must be made prior to January 1 of the subsequent tax year. *Ala. Code § 40-10-122(a)(2).*

Ala. Code § 40-10-180 et seq. provides counties with an alternative remedy for collecting delinquent property taxes. Counties may conduct auctions where bidders with the lowest interest rate can purchase tax liens on delinquent properties. Private auditing or collection firms are prohibited from recovering certain expenses from taxpayers according to *Ala. Code § 40-29-20.1.*

On or before December 2021, and December 1 of each year thereafter, implementation of the FORT System (Fleet Online Registration and Tax System) requires each county, municipality, or other local taxing authority that levies an ad valorem tax shall provide the Department of Revenue with the ad valorem tax rate needed to calculate the applicable county, municipal, or local taxing authority's millage rate. The ad valorem taxes collected by the department for a fleet vehicle registered through the FORT System shall be distributed to the local official responsible for distributing ad valorem tax in the county in which the vehicle is based. *Ala. Code § 40-12-307.*

2. Sales and Use and Other Local Taxes

With one important exception discussed below, there is no general authority for counties to levy a sales and use or other local excise tax. Most counties, however, have local laws which allow for the levy of a sales and use tax and/or other taxes such as a lodgings or rental tax. Counties are prohibited from passing local laws levying a tobacco tax (*Ala. Code § 40-25-2(f)*) or a tax on alcoholic beverages (*Ala. Code § 28-3-284*). These local laws typically earmark the local tax for particular functions, such as county

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schools, volunteer fire departments, or the like. Some counties do receive local tax revenues into the county general fund.³

Counties are authorized to levy a sales and use tax for the benefit of public schools without passage of a local law pursuant to *Ala. Code § 40-12-4*. The county is not required to submit the question of whether or not to levy this tax to a vote of the people. However, *Ala. Code § 40-12-4* provides that a referendum may be called for this purpose if the commission so desires. All proceeds of the tax collected under *Ala. Code § 40-12-4* “shall be used exclusively for public school purposes” and pursuant to *Ala. Code § 40-12-4(b)*, in counties that have more than one local board of education, revenues collected shall be distributed among the boards of education under formulas established in the law.

Alabama law authorizes the county commission to self-administer local taxes or to contract with either the Alabama Department of Revenue (the Department) or a private company for any or all functions related to the collection, distribution, and enforcement of such taxes. *Ala. Code § 11-3-11.2*. Local taxes must generally “parallel” the corresponding state tax and the collection shall occur at the same time as state sales and use taxes. Among other things, this means that, unless there is specific statutory language providing otherwise, entities and property exempt from payment of the state sales or use tax are usually exempt from payment of the local sales or use tax as well. *See Ala. Code §§ 40-23-4 and 40-23-62* for exemptions from the state sales and use taxes.⁴ Additionally, the county must generally adopt rules and procedures that are consistent with those set by the Department. More specifically, *Ala. Code § 11-3-11.3* requires counties that collect their own taxes to use the same interest rate that the Department

³ Information regarding local taxes assessed and distributed in the various counties can be obtained from the Comparative Data on Alabama Counties publication available from the Association of County Commissions of Alabama’s website: www.alabamacounties.org.

⁴ *Ala. Code § 40-23-4(a)(45)* clarifies that the exemption for the sale of fruit or agricultural products applies when the seller both owns the land and harvests the product.

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uses for delinquent taxes in similar situations, as defined by *Ala. Code § 40-1-44*.

The local tax (and the corresponding state tax) is generally paid by the consumer to the seller/provider, and the seller/provider remits the tax to the taxing authority on a monthly basis under its rules and procedures. As a result of legislation passed in 2012, the seller has the option to pay all state and local sales and use or rental taxes through an online program administered by the Department known as ONE SPOT, provided he or she complies with the rules and procedures set out in the law and promulgated by the Department. *See Ala. Code 40-23-240 et seq.*⁵

The collection and enforcement of state and local sales and use tax due on out-of-state purchases made online or otherwise has traditionally been difficult and not generally successful because an out-of-state seller who does not have “nexus” with the state of Alabama cannot be required to collect and remit the tax. Under those circumstances, the purchaser is responsible for remitting the tax, but enforcement of those provisions of law is nearly impossible. In 2015, the Alabama Legislature enacted a law establishing a program to allow out-of-state sellers to voluntarily remit a special “simplified sellers use tax” on all sales made into the state in exchange for certain protections against audit and other taxation.⁶ *Ala. Code § 40-23-191 et seq.*

Recent amendments have improved and expanded the program.⁷ Out-of-state companies may continue to participate in the program if they establish a physical location within the State of Alabama. *Ala. Code § 40-23-191(b)(2)*. However, an out-of-state vendor that established a substantial nexus by acquiring an in-state company may participate. *Ala. Code § 40-23-190*. Additionally, the Department of Revenue may disclose the names of the companies that participate in the program. *Ala. Code § 40-23-197.1; see also Ala. Code § 40-23-195(b)*.

⁵ *Ala. Acts No. 2012-279*.

⁶ *See, Ala. Acts No. 2015-448 and Ala. Acts No. 2016-110*.

⁷ *See, Ala. Acts No. 2017-82 and Ala. Acts No. 2018-539*.

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The rate of this tax is 8% on all sales regardless of jurisdiction within the state, which eliminates the out-of-state vendor from having to determine the tax rate for a particular jurisdiction. Pursuant to *Ala. Code § 40-23-197*, the state receives 50% of the proceeds and counties and municipalities each receive 25% of monies collected through this program. The money is distributed to each county in the state on a prorated basis according to population as determined in the most recent federal census prior to the distribution. *Ala. Code § 40-23-197(a)(2)*. All monies distributed to the county are paid to the county general fund on a quarterly basis. *Ala. Code § 40-23-197(b)*. Passage of this law should significantly increase state and county sales and use tax revenues from the previously-uncollected taxes due on Internet and other out-of-state sales.

Ala. Code §§ 40-23-210 et seq. provides for an annual back-to-school state sales tax holiday held each year during the first weekend of August. The items included in the tax holiday are set out in *Ala. Code § 40-23-210*. County governments are not required to participate in the holiday, but they may opt into participation by approving a resolution and notifying the Alabama Department of Revenue of their participation no later than thirty days before the date of the tax holiday. *Ala. Code § 40-23-213*. This Code section specifically prohibits counties and municipalities from establishing a local sales tax holiday at any other time of year.

3. Business License Taxes

Ala. Code § 40-12-2 levies a business license tax upon “any person, firm, or corporation” engaged in or carrying on any business in the state. The process for payment of the tax is burdensome and complicated and the amount of the tax varies widely depending upon the type of business being conducted. See *Ala. Code § 40-12-1 et seq.* regarding the business licensing process and amounts. There is an additional county license tax levied in *Ala. Code § 40-12-2(e)*, which is basically one-half of the tax paid to the state. See also *Ala. Code § 40-12-3*. The business licensing function is generally administered by the judge of

probate, although some counties have moved this duty to a revenue or license commissioner.

In addition to the county portion of the state-county business license tax, several counties have enacted local laws levying a local business license tax. A list of counties with a local business license tax can be found in the Comparative Data on Alabama Counties publication available from the Association of County Commissions of Alabama's website: www.alabamacounties.org.

4. Uniform Severance Tax

There is a local severance tax of 10¢ per ton levied on all natural minerals in the state, with the revenues paid to the counties from which the minerals were extracted. *See Ala. Code § 40-13-50 et seq.* *Ala. Code § 40-13-52* states that the tax is levied “primarily to compensate the county for the use of its roads and infrastructure and also for the benefit, health, safety, and economic development of the county in which the severed material is severed”. *Ala. Code § 40-13-58* requires that at least 75% of the proceeds be used for road and bridge construction, maintenance, and repair or, where a local law so provides, for a local economic development authority, public transit, construction and maintenance of county roads and bridges, or the reclamation of lands where natural materials have been severed.⁸ Twenty-five percent of monies distributed to a county must be expended on county roads or projects within the corporate limits of a municipality if the severance of materials took place within the corporate limits of that municipality.

This law, known as the Alabama Uniform Severance Tax Act, preempts local acts levying a severance tax on minerals, and provides that the uniform severance tax levied in this statute shall be “the only method and manner to tax the severance of severed materials subject to the tax levied” in this law. *Ala. Code § 40-13-59*.

⁸ *Ala. Code § 40-13-58* provides that all revenues distributed to Franklin County shall be allocated and utilized exclusively for economic development.

B. REVENUES FROM SHARED STATE TAXES

Counties are to a large extent dependent upon local shares of various state and federal revenues which basically take two forms: shared revenues from taxes and fees and grants-in-aid of specific activities. Local government in Alabama has always been responsible for the local administration of certain state functions, and in part because of these mandated responsibilities, the Legislature has enacted a number of measures providing some revenue for counties. Many of the “shared taxes” are earmarked for particular purposes. Very little of the monies paid to the county from a state tax or fee are available for general fund purposes as determined by the county commission.

A sampling of shared taxes is set out below:

1. Road and Bridge Funding

a. State Gas Tax

Alabama general law levies several state gasoline and diesel fuel taxes. Counties receive a portion of most of the gas tax levies, and 4.69% of the 6¢ per gallon excise tax of the diesel tax proceeds. There are limitations on the use of monies distributed to counties which vary depending in part on the tax levy from which the monies are paid to counties.

The state gasoline tax is found in *Ala. Code § 40-17-325(a)(1)*. Effective October 1, 2016, the tax is 18¢, which includes a 7¢ excise tax, a supplemental 5¢ excise tax, and an additional 6¢ excise tax. While all of the gas tax proceeds are earmarked for state, county, or municipal road and bridge use, as outlined below, each tax has special restrictions for how the monies can be spent. *See Ala. Code § 40-17-359 and § 40-17-362.*

Taxes on gasoline and diesel fuel will increase by 10¢ per gallon in 2021 as a result of the Rebuild Alabama Act. The Act also provides for additional adjustments to the levy, beginning in 2023, based upon the cost of construction. *See Ala. Acts No. 2019-2.*

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Counties receive 55% of the net tax proceeds from the 7¢ tax, with 25% distributed equally to all 67 counties and 30% distributed by population based upon each county's pro rata portion of the state's population. See *Ala. Code § 40-17-359(a)(7)*. *Ala. Code § 40-17-359(e)(1)* requires that 10% of net tax proceeds paid to a county be distributed to the municipalities of the county on a pro rata basis of the total population of all municipalities in the county.⁹ Counties also receive 55% of the portion of the 6¢ tax that is earmarked for highway purposes (two-thirds of the monies collected). *Ala. Code § 40-17-359(p)*. The county portion of the 5¢ supplemental excise tax is equal to 55% of two-fifths of the proceeds from this tax. *Ala. Code § 40-17-359(f)*.

Ala. Code § 40-17-359 sets out the permissible uses for monies counties receive from the proceeds of the 7¢ excise tax.

- *Ala. Code § 40-17-359(b)(2)* provides that monies shall not be used other than for construction, improvement, maintenance, and supervision of roads and bridges, including the retirement of bonds for which revenues have been or may be pledged. See, also, *Ala. Code § 40-17-359(j)(2)*.
- *Ala. Code § 40-17-359(g)* authorizes counties to pay a portion of the county commissioners' salaries proportionate to time spent supervising, inspecting, accepting, building, or repairing county roads or bridges.
- *Ala. Code § 40-17-359(h)* authorizes counties to pay up to 75% of the clerk's compensation out of the road and bridge fund or gasoline tax funds of the county.

⁹ Some counties have local legislation requiring that a larger portion of the proceeds be distributed to municipalities in the county.

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- *Ala. Code § 40-17-359(k)* authorizes counties to use proceeds for the construction and maintenance of streets within a municipality located in the county.
- *Ala. Code § 40-17-359(l)* authorizes counties to use proceeds for construction, reconstruction, maintenance and repair of public highways and traffic control areas located on public school property or state school property within the county.

Pursuant to *Ala. Code § 40-17-362*, 6¢ monies shall be utilized by the county for resurfacing, restoration, and rehabilitation – the “RRR” monies. *Ala. Code § 40-17-362* defines “resurfacing, restoration, and rehabilitation” as:

Work undertaken primarily to preserve an existing facility. Restoration and rehabilitation is work required to return the existing pavement or bridge deck, including shoulders, to a condition of adequate structural support or to a condition adequate for placement of an additional state of construction. Resurfacing consists of the placement of additional surface material over the existing, restored, or rehabilitated roadway or bridge deck to improve serviceability or to provide additional strength. Resurfacing, restoration, and rehabilitation work may include changes to geometric features, such as minor widening, flattening curves, or improving sight distances.

Ala. Code § 40-17-362(b)(2) also allows these monies to be used for vegetation management on the right-of-way through the use of herbicides, heavy equipment, and other means, but not for purchasing herbicides or equipment. These funds cannot be used for new construction unless 90% of the county's paved road system has achieved a grade of 85% based on the Department of Transportation's annual county roads and bridges maintenance report. *Ala. Code § 40-17-362(b)(2)*.

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Ala. Code, § 40-17-359(f) addresses use of 5¢ monies, which can also be used for RRR projects and for vegetation management. The monies can be used to match federal aid on any projects that meet the requirements for federal funding and "for new construction without regard to the provision that 90% of the county's paved road system has achieved a grade of 85% based on the [transportation department's] annual maintenance report of county roads and bridges."

b. Petroleum Inspection Fees

Ala. Code § 8-17-87 imposes a 2¢ inspection fee on the ultimate consumer of gasoline or undyed diesel fuel where applicable under the law. The inspection fee is also imposed on other petroleum purchases such as dyed diesel, dyed kerosene, and lubricating oil under certain circumstances. The inspection fee is 2¢ per gallon on dyed diesel fuel, 1¢ per gallon on dyed kerosene, and 15¢ per gallon on lubricating oil. There is also a reduced rate of \$.00025 per gallon on dyed diesel and dyed kerosene for boats, tractors, railroads, and preservation of wood products. Counties receive a small portion of the proceeds of this fee. *See Ala. Code* § 8-17-91.

c. Motor Vehicle License Taxes and Registration Fees

Ala. Code § 40-12-240 *et seq.* provides for license taxes and registration fees for motor vehicles. Counties receive a portion of the proceeds from motor vehicle and truck and tractor taxes and fees as set out in *Ala. Code* § 40-12-248. The Rebuild Alabama Act outlined a plan for increasing various taxes related to motor vehicles. Counties receive twenty-five percent (25%) of the new revenue to be put strictly towards road and bridge improvements. *See Ala. Acts No. 2019-2*. The Act also requires the Department of Transportation to contribute to the salary of the county engineer. *See Ala. Code* §§ 11-6-4 and 11-6-23. *See also, Chapter IX*. As with other highway funding, there are restrictions on the use of these monies. *See Ala. Code* § 40-12-270.

d. Drivers License Fees

Ala. Code § 32-6-5 provides that the judge of probate shall retain \$1.50 of all fees collected for drivers licenses, with all fees paid

into the "public highway and traffic fund of the county". The statute does not mandate specific uses for these funds.

2. Corporate Privilege Tax

An annual privilege tax is levied on every corporation, limited liability entity, and disregarded entity doing business in Alabama, or organized, incorporated, qualified, or registered under the laws of Alabama. *Ala. Code § 40-14A-22*. The privilege tax is assessed based upon taxable income of the business as set out in *Ala. Code § 40-14A-22(b)*. See also *Ala. Code § 40-14A-23*. Beginning October 1, 1999, each county receives an amount equal to what they received from the now-repealed shares tax and beginning with the fiscal year ending September 30, 2000, the county's annual distribution increases each year by three-quarters of 1% of the amount received by each entity in the preceding year. *Ala. Code § 40-14A-26(b)*.

3. Deed and Mortgage Tax

The state levies privilege license taxes on deeds, bills of sale, mortgages, deeds of trust, conditional sales contracts, and other instruments which convey an interest in property or which secure the payment of any debt. *Ala. Code § 40-22-1*. The tax is paid to the judge of probate. Counties receive one-third of the tax paid.

4. State Sales Tax

The state sales tax is levied pursuant to *Ala. Code § 40-23-26* at a rate of 4% on the gross sales, or gross receipts, of retail business activities.¹⁰ See, *Ala. Code § 40-23-1 et seq.* generally regarding administration of the state sales tax. The counties annually receive \$378,000 from the proceeds of the sales tax, with one-half of the proceeds distributed equally among the counties and the remaining one-half distributed on the basis of population. *Ala. Code § 40-23-35*. These funds shall be used for full-time health services in cooperation with the State Board of Health or the federal government and for extension work in cooperation with the Alabama Agriculture Extension Service or the federal government.

¹⁰ A corresponding state use tax is found in *Ala. Code § 40-23-60 et seq.*

5. Severance Taxes

The state levies a privilege license tax on persons engaged in the business of producing or severing oil, gas, or other hydrocarbons from or beneath the soil or the waters of the State of Alabama. *Ala. Code § 40-20-1*. For most oil and gas produced in the state, the amount of tax is measured at the rate of 8% of the gross value of oil or gas at the point of production. However, there are certain exceptions to this rate according to county population, well size, and the date the well came into production. *See Ala. Code § 40-20-1 et seq.*

Ala. Code § 40-20-8 designates the allocation and distribution of the net taxes collected. From offshore production, 90% of the taxes are allocated to the state general fund and the remaining 10% goes to the counties in which the oil or gas was produced to be used at the discretion of the county governing body. Twenty-five percent of the taxes levied and collected from all other production are allocated to the state general fund and 75% is shared by the state and the counties. Of that portion, 66 $\frac{2}{3}$ % is distributed to the state general fund, the counties in which the oil and gas were produced, and the municipalities within those counties under a schedule set out in the law.

Ala. Code § 40-13-31 levies a \$0.20 per ton excise and privilege tax on coal or lignite severed within the State of Alabama. All proceeds are paid to local government, with 50% of the tax collected on the severance of coal or lignite within the police jurisdiction or the corporate limits of a municipality paid to the municipality and 50% paid to the county. The entire amount of the tax is paid to the county for severance of coal or lignite in non-municipal territory within a county. *Ala. Code § 40-13-32*. Counties, municipalities, and taxing authorities are prohibited from enacting and implementing any excise or privilege tax on any person severing coal or lignite within the state. *Ala. Code § 40-13-36*.

6. Mineral Documentary Tax

Ala. Code § 40-20-31 levies a mineral documentary tax upon the filing and recording of every lease and other writing executed for a leasehold interest in and to any nonproducing oil, gas or other minerals in, on or under lands situated within the State of Alabama. This tax is also assessed where such interest is assigned or extended beyond the term fixed by the original instrument, and upon every deed, instrument, transfer, evidence of sale or other writing conveying any interest in or right to receive royalty from any nonproducing oil, gas or other minerals in, on or under lands within the State. Counties receive 35% of the proceeds of this tax, which is distributed to the county general fund pursuant to *Ala. Code § 40-20-37*.

7. Court and Other Fees

Title 12, Chapter 19, Code of Alabama 1975 governs the amount and manner of distribution of docket fees which shall be assessed and collected in district and circuit courts throughout the state. The fees set out in the law are in general earmarked to fund the court system.

Ala. Code § 12-19-20(a) provides that “Court fees in civil and criminal cases in the circuit court and district court shall be uniform for each type of case and each court level.” The vast majority of counties, however, have passed local constitutional amendments allowing the Legislature to enact local laws increasing courts costs in the county with proceeds from the additional amounts paid to the county. Local laws assessing additional court fees are usually earmarked for construction and/or maintenance of courthouses, jails, or for law enforcement purposes.

In addition to docket fees, there are a variety of other fees set pursuant to state or local law for many filings in one court or another. In many instances, counties receive small portions of these fees, which are again often earmarked for a particular purpose.

8. Alcoholic Beverage Tax and Profits

Ala. Code §28-3-280 levies a 2% sales tax on the retail price of alcoholic beverages sold at retail by Alcoholic Beverage Control Board stores. Under *Ala. Code* § 28-3-281, wet counties receive 25% of the proceeds from the tax collected in the county and the remaining 75% is distributed to the municipality where the tax is collected. These monies shall be used for law enforcement purposes unless there is a local act providing otherwise. *Ala. Code* § 28-3-282. Under *Ala. Code* § 28-3-284, counties and/or municipalities receiving tax monies from this levy are prohibited from levying any additional taxes or fees on the sale of alcoholic beverages which would be collected by the Alabama Alcoholic Beverage Control Board or its stores.

Wet counties in Alabama also receive a portion of the profits received from sales at liquor stores operated by the Alabama Alcohol Beverage Control Board. *Ala. Code* § 28-3-74. Under this Code section, counties receive 10% of the first \$2,000,000 in profits which can be used for general county purposes, except that 1% of this money is divided equally among wet counties for public health purposes.

In addition to the above, *Ala. Code* § 28-3-184 imposes a \$0.05 tax for each twelve ounces of beer sold in the state. One-half cent of each \$0.05 collected by the state is distributed equally among the wet counties. All table wine is taxed at \$.45 per liter, with \$.07 distributed to the county or municipality in which the wine is sold. *Ala. Code* § 28-7-16.

Counties are authorized to levy license fees on the sale of alcoholic beverages by hotels, clubs, and restaurants. See *Ala. Code* §§ 28-3A-1 *et seq.* The licenses are administered by the Alcoholic Beverage Control Board, but all fees collected are paid quarterly to the counties in which the licenses were levied.

9. Financial Institutions Excise Tax

Ala. Code § 40-16-4 levies a 6½% excise tax on the net income of each financial institution in the state. See *Ala. Code* § 40-16-1 *et seq.* for application of the tax and procedures for collection.

Counties receive 16.7% of the tax based on a formula outlined in *Ala. Code § 40-16-6(d)*.¹¹ Municipalities receive a portion as well. Pursuant to *Ala. Code § 40-16-6(e)*, no county or municipality shall levy a business privilege tax on financial institutions within their jurisdiction, except for license taxes. In 2019, the Legislature passed the FIET Reform Act, which instituted an estimated, quarterly prepayment system for FIET monies distributed to counties.¹² This new scheme should ensure that counties will receive some portion of the funding.

10. TVA Distribution

Pursuant to *Ala. Code § 40-28-2*, 78% of the payments made to the state by the Tennessee Valley Authority (TVA) in lieu of state ad valorem taxes is transferred to the counties in the state served by the TVA. Distribution of the TVA in-lieu of tax payments is made among the counties in which TVA property is located on the basis of a formula set out in *Ala. Code § 40-28-3*. Any county receiving a portion of the TVA in-lieu of tax payments must share its allocation with any municipality within the county that is served in whole or in part by the TVA.

Ala. Code § 40-28-2(c)(1) provides that the state shall annually distribute 5% of the in-lieu-of-taxes payments to the dry counties and municipalities which are not served by TVA. The money shall be distributed on the same proportionate basis that each dry county received in fiscal year 1978-79 from ABC. payments as compared to the total ABC payments received by all dry counties not served by TVA during the same fiscal year. However, *Ala. Code § 40-28-5*, enacted in 2010, reallocates certain liquor tax revenues for the payment of these monies due to be paid to dry counties. This change is intended to eliminate any TVA distributions to counties not served by the TVA, and will eventually, in effect, supersede the provisions of law providing for TVA monies to be paid to dry counties.

¹¹ Tax credits used to offset liability for the excise tax may no longer be used to reduce the county-distributed portion of the tax. *Ala. Acts No. 2016-280*.

¹² See *Ala. Acts No. 2019-284*.

11. County Tax Offset Program

While not a revenue-raising measure, legislation passed in 2014 provides counties and other county-created entities an excellent tool for collecting unpaid debts due the county or county-created entity through offset of the debtor's state income tax refund. Under *Ala. Code § 40-18-100 et seq.*, the offset must occur under rules and procedures set out in the law which, among other things, require that any debt due a county or county-created entity be submitted to the Alabama Department of Revenue through the Association of County Commissions of Alabama or an entity it has established for this purpose. *See Ala. Code § 40-18-103.* A "debt" is defined in *Ala. Code § 40-18-100(3)* as, "Any liquidated sum due and owing . . . which has accrued through contract, subrogation, tort, or operation of law regardless of whether there is an outstanding judgment for that sum". The debt must be at least \$25.00. *Ala. Code § 40-18-102.*

The Association administers a County Tax Refund Setoff Program to process debts for counties and county-created entities such as county hospitals. The program has been very successful in its first few years of operation, with participating counties collecting unpaid debts due for solid waste collection, participation in community corrections programs, and other unpaid fees due to the county for services provided.

C. THE ALABAMA TRUST FUND

The Alabama Trust Fund was created and authorized by *Ala. Const. Amend. 450*, which allotted the proceeds of all oil and gas capital payments received by the state to be deposited into this trust fund. Pursuant to *Ala. Code § 11-29-5*, counties began to annually receive 10% of the trust income once the fund exceeded \$60,000,000.¹³ Counties first received revenue from this fund in 1997. In 2002, the Heritage Trust Fund merged into the Alabama Trust Fund, significantly increasing the trust income, and therefore, the county proceeds.

¹³ Municipalities also began receiving 10% of the trust income at this time pursuant to *Ala. Code § 11-66-5*.

Revenue Sources

The county monies are paid into the County Government Capital Improvement Fund created in *Ala. Code § 11-29-4*. With the ratification of *Ala. Const. §§ 666 and 668*¹⁴ in 2000, the County Government Capital Improvement Fund and the county entitlement to 10% of the trust income from the Alabama Trust Fund is now included in Alabama's Constitution.

Ala. Code § 11-29-6 and these constitutional provisions provide that 45.45% of the trust income paid to counties is to be distributed equally among the sixty-seven counties and the remaining 54.55% is to be distributed based upon the population of each county compared to the population of the entire state. These provisions also set out that the funds may be used only for the following purposes:

- Public buildings, including the payment of rent on public buildings and purchase of lands for public buildings. *Ala. Code § 11-29-6(a)*.
- The purchase of land for sanitary landfills and solid waste handling and disposal equipment or facilities. *Ala. Code § 11-29-6(b)*.
- The purchase of land, rights of way, equipment, supplies, and facilities for the treatment of public water and waste water. *Ala. Code § 11-29-6(c)*.
- Up to 50% for the construction, maintenance, reconstruction, restoration, or resurfacing of county roads and bridges. *Ala. Code § 11-29-6(d)*.
- The payment of bonds and other indebtedness incurred for any of the purposes for which these funds can be utilized. *Ala. Code § 11-29-6(e)*.

¹⁴ These two constitutional amendments are identical.

- The operation and maintenance of the county health department. *Ala. Code § 11-29-6(f)*.
- The operation and maintenance of the county department of human resources. *Ala. Code § 11-29-6(g)*.

D. FEDERAL REVENUE SOURCES

Counties are eligible for various forms of federal assistance or grants-in-aid of specific projects or programs. There are numerous examples such as grants to assist in the construction of rural water and waste disposal systems, to assist with airport and hospital construction, health services development, personnel management, road and bridge projects, and the acquisition of recreational facilities. Some specific examples of statutory and discretionary federal funding for counties are set out below.

1. National Forest Receipts

Under federal legislation, counties with national forests receive payments in lieu of taxes as partial compensation for lost property tax revenues on certain federally-owned lands exempt from state ad valorem taxation. Although a relatively small amount of total county revenue in Alabama is derived from this source, this has become an important source of revenue for counties with national forests.

Ala. Code § 9-13-2 provides that any national forest monies the state receives from the federal government shall be distributed among the several counties proportional to the area of national forests located therein. The county shall pay 50% of the proceeds to the county board of education and shall expend the other 50% "for the benefit of the public roads of the county".

The federal monies distributed under this program have decreased significantly in recent years and Congress considers eliminating distribution of funds to states and counties under this program on an almost annual basis. Under these circumstances, it is unclear

how long this revenue source will be available to counties receiving these funds.

2. Federal Block Grants

With the passage of the Housing and Community Development Act of 1974, *42 U.S.C. Section 5301 et seq.*, Congress established the Community Development Block Grant Program to aid in the creation of viable communities able to provide residents with decent housing, a suitable living environment, and expanded economic opportunities. Through the block grant approach, the State of Alabama has the flexibility to distribute its allocation of these funds according to its own priorities as long as each funded activity meets at least one of the following mandates:

1. It must principally benefit low and moderate income people;
2. It must aid in the prevention or elimination of slums and blight; or
3. It must address needs having a particular urgency because they pose an immediate threat to the health and safety of the community.

The Community Development Block Grant Program and many other federal and state grant programs are administered by the Alabama Department of Economic and Community Affairs (ADECA). More information about the many grant programs and requirements for participation is available from ADECA's website at www.adeca.alabama.gov.

E. COUNTY INDEBTEDNESS

1. Forms of Indebtedness

Counties have no inherent authority to incur debt. Under *Ala. Const.* § 222, the Legislature may enact general laws authorizing counties to issue bonds. As a result, the Legislature has authorized the counties to issue bonds for a number of specific purposes or

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improvements. Some examples are set out below.

Ala. Code § 11-10-1 allows the county commission to make “temporary loans in anticipation of the collection of [ad valorem] taxes for the year in which such loans are made”. See generally *Ala. Code § 11-10-1 et seq.* for more information on the process and procedures for obtaining such loans. Under *Ala. Code § 11-10-1*, the maximum loan amount annually is \$400,000.

Counties are authorized under *Ala. Code § 11-10-6* to make temporary loans in anticipation of receipt of payments from the U.S. government under the Local Fiscal Assistance Act of 1972 (31 U.S.C. Section 6702). The loans cannot be for a sum greater than the amount of the anticipated receipts less interest from the time of the loan until the time of the anticipated receipt of the funds.

Counties can also issue securities in anticipation of any grant. *Ala. Code § 11-11B-1 et. seq.*

Ala. Code § 11-11-1 et seq. allows a county to issue warrants in anticipation of the state gasoline taxes to be distributed to that county. Additionally, counties can issue warrants in anticipation of ad valorem taxes to be received under *Ala. Const. § 215* for the construction of public buildings or roads and bridges. See *Ala. Code § 11-11A-1 et. seq.*

Each county is authorized to sell and issue warrants for the purpose of financing the cost of acquiring, by construction, purchase or otherwise, any public facilities such as courthouses, schools, roads, water and sewer systems and other specific facilities. See *Ala. Code § 11-28-1 et seq.* The warrants may evidence a general or limited obligation debt of the county, provided the funds are irrevocably pledged for the payment of the principal and interest.

There are other provisions in Alabama’s general law and in some local laws that authorize counties to incur debt for certain purposes through issuance of bonds or otherwise. And there are special

legislative acts or state-initiated programs in which counties have been allowed to participate in special bond programs for particular projects, such as the repair and maintenance of county roads and bridges.¹⁵

2. Bond Financing Review Form

In an effort to ensure that counties are fully informed about the actual cost of indebtedness, Alabama law provides that no county commission may enter into any bond financing agreement or other transaction related to establishing bonded indebtedness until and unless the commission has executed a county government bond financing review form. *See Ala. Code § 11-8A-1 et seq.* The form, developed by the Alabama Department of Examiners of Public Accounts pursuant to *Ala. Code § 11-8A-3(a)*, requires the county to attest that it understands the specifics of any bond agreement the county is contemplating executing. The law sets out the circumstances when the form must be executed and the information required to be included on the form.

Pursuant to *Ala. Code § 11-8A-5*, the county commission shall consult with and obtain advice from either an attorney, the county administrator, or a certified public accountant regarding any and all bond proposals received by the county in preparing the form. The persons utilized by the county commission for advice and consultation shall review all documents to be included at the execution of the bond financing agreement. A copy of the form required to be executed can be downloaded from the website of the Department of Examiners of Public Accounts: www.examiners.alabama.gov.

3. Debt Ceiling

Ala. Const. § 224, as amended by Amendment 342 of the Alabama Constitution, provides that no county shall become indebted in an amount greater than 5% of the assessed valuation of its taxable property including its present indebtedness. Many counties have

¹⁵ See, for example, *Ala. Const. Amends. 666 and 668 of Alabama's Constitution* which, among other things, created a \$350 million bond issue for the repair and replacement of structurally deficient county bridges.

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passed local constitutional amendments to increase the county's debt limit. Additionally, a number of general statutes exempt various instruments of indebtedness issued by counties from the state usury laws. *See e.g. Ala. Code §§ 8-8-7, 11-9-27, 11-11-8, 11-11A-4, 11-14-18, 11-20-5, and 40-7-99.*

Alabama's Constitution also contains several provisions that place restrictions on the borrowing powers of Alabama counties. For example, *Ala. Const. § 94* provides that the Legislature may not authorize any county or other subdivision of the state to lend its credit to or grant public money or anything of value in aid of any individual, association, or corporation. This section also prohibits a governmental entity from becoming a stockholder in any corporation.

There are exceptions to the application of the debt limits set under the Constitution. However, the county commission must always consider these limitations when contemplating new debt and ensure that it has the legal authority to assume the obligations before binding the county to new or additional indebtedness.

4. Bond Referenda

In addition to the provisions of *Ala. Const. § 224*, counties are also limited in the ability to incur debt under *Ala. Const. § 222*, which requires that all local government bonds proposed to be issued under the general laws of the state must first be authorized by a majority vote of the qualified electors of the county or other political subdivision involved. *Ala. Const. § 104* prohibits the Legislature from enacting any local law permitting a county or other political subdivision to issue bonds or other securities until the matter has been approved by a vote of the qualified electors of the subdivision concerned.

There are exceptions to the requirement for a referendum on the question of whether bonds shall be issued, such as bonds to refund bonds existing or authorized before the ratification of the Constitution and special assessment bonds issued or to be issued

for street and sidewalk improvement or for sanitary or storm sewers.

5. Bonds Distinguished From Warrants

There is a distinction between county warrants and county bonds. Even though they bear interest and are payable at future dates, the issuance of warrants does not apparently need to be authorized by the referendum required under *Ala. Const.* § 222 for the issuance of bonds.¹⁶ The Supreme Court of Alabama has stated that a warrant is an order to pay, while a bond is a promise to pay:

“The issuance by the authority of a [county commission] of interest bearing warrants on the county treasurer, payable at stated times in the future, to pay for public buildings, public roads and bridges, is not the issuance of bonds by the county within the provisions of Section 222 of the Constitution Not being bonds, the right to issue them [warrants] for the purpose stated did not depend upon a favorable election held as provided in Section 222 of the Constitution.”¹⁷

The appellate courts of the state have determined in several cases that notes made for temporary financing in anticipation of taxes do not require a referendum when the proceeds of the loans are used for the purposes for which the taxes are levied. This includes certain warrants issued by county boards of education in counties levying special school taxes and revenue bonds.¹⁸ On the other

¹⁶See e.g. *Tally v. Comm’rs’ Court of Jackson County*, 175 Ala. 644, 39 So. 167 (Ala. 1905).

¹⁷*Littlejohn v. Littlejohn, County Treasurer*, 195 Ala. 614, 71 So. 448 (Ala. 1916). See *O’Grady v. City of Hoover*, 519 So. 2d 1292 (Ala. 1987).

¹⁸Illustrative cases include: *Opinion of the Justices*, 280 Ala. 692, 198 So. 2d 269 (Ala. 1967); *Rogers v. City of Mobile*, 277 Ala. 261, 169 So. 2d 282 (Ala. 1964); *Opinion of the Justices*, 230 Ala. 673, 163 So. 105 (Ala. 1935) (relative to gasoline tax anticipation warrants) and *Opinion of the Justices*, 231 Ala. 152, 164 So. 572 (Ala. 1935) (relative to school warrants); 228 Ala. 140, 152 So. 901 (Ala. 1934); *In re Opinions of the Justices*, 226 Ala. 570, 148 So. 111 (Ala. 1933); *Parsons v. City of Birmingham*, 223 Ala. 610, 137 So. 665 (Ala. 1931).

hand, the courts seem to construe *Ala. Const. § 104(17)* as prohibiting the Legislature from enacting local laws authorizing local governments to issue bonds or other securities unless the issuance of the bonds or securities has been authorized by a local referendum.¹⁹

6. Warrants for Public Construction

The Legislature has granted all counties the power to issue warrants to finance the costs of acquiring, constructing, equipping and improving a wide variety of public facilities. *See, Ala. Code §§ 11-28-1 et seq.* The types of public facilities for which counties may borrow pursuant to the statute are set out in *Ala. Code § 11-28-1.1* and include the following:

- County buildings, such as courthouses, jails, hospitals, school buildings, and libraries;
- Roads, bridges, and related transportation improvements;
- Utility systems, such as water distribution systems and sanitary sewer systems;
- Capital equipment, such as computers, motor vehicles, and construction and maintenance equipment; and
- Any other public facilities that counties have been or may be authorized to acquire.

Warrants issued pursuant to this statute may be either general obligations that are secured by the full faith and credit of the issuing county or special limited obligations that are payable solely out of certain pledged tax proceeds or revenues from a specified project or enterprise. *Ala. Code § 11-28-2.*

¹⁹*Se, e.g. Newton v. City of Tuscaloosa*, 251 Ala. 209, 36 So. 2d 487 (Ala.1948).

CHAPTER IX

ADMINISTRATION OF THE COUNTY ROAD AND BRIDGE SYSTEM

A. OVERVIEW OF COUNTY COMMISSION DUTY AND AUTHORITY

The county commission is responsible for “the general superintendence” of the public roads, bridges, and ferries in the county. In fact, the appellate courts of the state have held that the county has a duty to maintain its streets in a reasonably safe condition for travel and to remedy defects in the roadway upon receipt of notice of such defect. *Jefferson County v. Sulzby*, 468 So.2d 112 (Ala. 1985).

This duty and authority comes in large part from *Ala. Code § 23-1-80* which creates fairly broad powers in relation to construction, repair, and control of county-maintained roads, and to some extent is the authority for almost all actions taken by the county commission regarding its roads and bridges. *Ala. Code § 23-1-80* reads as follows:

The county commissions of the several counties of this state have general superintendence of the public roads, bridges and ferries within their respective counties so as to render travel over the same as safe and convenient as practicable. To this end, they have legislative and executive powers, except as limited in this chapter. They may establish, promulgate and enforce rules and regulations, make and enter into such contracts as may be necessary or as may be deemed necessary or advisable by such commissions to build, construct, make, improve and maintain a good system of public roads, bridges and ferries in their respective counties, and regulate the use thereof; but no contract for the construction or repair of any public roads, bridge or bridges shall be

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made where the payment of the contract price for such work shall extend over a period of more than 20 years.

Ala. Code § 11-3-10 also provides counties with general authority "in relation to the establishment, change, or discontinuance of roads, bridges, causeways and ferries within the county, except where otherwise provided by law . . ."

In addition to these broad grants of authority found in the law, there are several other statutory provisions addressing specific county authority related to county roads and bridges, including but not limited to, the following:

- The authority to exercise eminent domain where necessary for the purpose of establishing and changing public roads and bridges in the county. *Ala. Code § 23-1-82; See also §§ 11-80-1 and 18-1B-2.*
- The authority to regulate certain uses of county right of ways. *See e.g. Ala. Code § 11-88-14.*
- The authority to set speed limits and promulgate other "rules of the road" regulations on county roads and bridges. *See e.g. Ala. Code 32-5A-170 et seq.*
- The authority to limit or prohibit travel due to road deterioration or weather conditions. *See e.g. Ala. Code § 32-1-3.*
- The authority to set weight limits on certain county roads. *See e.g. Ala. Code § 32-9-20.*
- The authority to regulate the construction of roads included in the development of new or expanding subdivisions. *Ala. Code § 11-24-1 et seq.*

County Road and Bridge System

- The authority to require notice when county roads will be utilized for certain logging operations. *Ala. Code § 23-1-80.1.*

B. COUNTY'S LIABILITY FOR FAILURE TO MAINTAIN

As discussed in Chapter I, counties do not enjoy immunity from liability. Therefore, counties can be sued for negligent maintenance and repair of roads and bridges, and have been held liable for damages when the legal standard of care has not been met. *See e.g. Cook v. County of St. Clair, 384 So.2d 1 (Ala. 1980).* It is incumbent upon counties to make all diligent efforts to maintain their roads in a reasonably safe condition and to remedy defects as soon as possible upon notice of same.

County commissioners and county engineers can and are sued in their official capacity, and are not generally individually liable for actions taken in the line and scope of their employment or office. *See e.g. Smitherman v Marshall County Commission, 746 So.2d 1001 (Ala. 1999).* There is a statutory cap on the recovery of judgments against the county or its officials or employees. *Ala. Code § 11-93-1 et seq.* And there is also a statutory prohibition against awarding punitive damages in a suit against a county. *Ala. Code § 6-11-26.*

C. STRUCTURE OF THE COUNTY HIGHWAY DEPARTMENT

All counties maintain a county road (or highway) department that is generally responsible for the oversight and administration of the county road system. While absent legislative or court action, the county commission generally has the ability to establish its own structure for administration of its road system, that structure has been established by local law in several counties. In other counties, the structure of the county and its system for supervising roads and bridges has been set by court order.

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There are three basic structures for supervision of the county road system:

1. The district system, where each county commissioner typically receives a portion of the available county road funds and maintains his or her own road crews, equipment, etc. Under this system, each county commissioner plans, supervises, and controls the road activities for his or her individual district.
2. The unit system, where planning, purchasing, construction, and maintenance relative to the county road system is administered on the basis of the county as a whole, usually with the county engineer supervising and overseeing all projects and activities in the county highway department under the direction of the county commission.
3. The modified unit system, where a portion of the road and bridge work is performed on a unit basis and a portion maintained under the district system.

D. COUNTY ENGINEERS AND ASSISTANTS

In 1939, the Legislature authorized the county governing bodies to employ a full-time professional engineer to supervise the administration of the highway function. Legislation enacted in 1971 provides that each county commission may employ a full-time engineer and fix the engineer's compensation. *See Ala. Code §§ 11-6-1 et seq.* No person is eligible for appointment to the office of county engineer unless he or she is a registered professional engineer and has had at least three years experience in the maintenance and construction of highways and bridges. No consulting engineer or consulting firm may act in the capacity of county engineer. The county may enter into a contract of employment with the engineer for a period of time not to exceed five years.

County Road and Bridge System

Pursuant to *Ala. Code § 11-6-4*, the Alabama Department of Transportation shall, upon application of the county commission, contribute towards the annual salary of the engineer of such county. The annual contribution, not including the value of retirement contributions, shall not exceed 70% of Step 18, or the top step, whichever is greater, of the salary schedule under the Professional Civil Engineer II, Senior classification in any one year.

Ala. Code § 11-6-3 sets out the general duties of the engineer which, subject to the approval and supervision of the county commission, are as follows:

1. Employ, supervise, and direct the employees necessary to maintain and construct the county public roads and bridges;
2. Perform such engineering and surveying as may be required to prepare and maintain necessary maps, plans, and records;
3. Maintain the accounting records necessary to reflect the cost of the county highway system; and
4. Perform such other duties as may be required in connection with the operation of the county highway system.

In addition to the duties set out in *Ala. Code § 11-6-3*, the county engineer has many other duties set by general state law – and many counties have local laws which further provide for the duties of the county engineer. A few examples of other general law duties of the county engineer are as follows:

- Certifying approval of certain subdivision plats prior to recording. *See e.g. Ala. Code § 11-52-30(g).*

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- Overseeing the development of subdivisions for compliance with the county's regulations. *See Ala. Code § 11-24-1 et seq.*
- Approving all aerial photographs or maps of land areas in the county prior to recordation in the probate office. *See Ala. Code § 35-2-80 to § 35-2-81.*
- Overseeing compliance with county regulations related to use of county roads, such as a logging notice ordinance adopted pursuant to *Ala. Code § 23-1-80.1.*

The county commission can also employ engineer interns to assist the county engineer. *Ala. Code § 11-6-20 et seq.* As in the case of the county engineer, the Alabama Department of Transportation can participate in the salary of the engineer interns, subject to certain conditions set out in the law. The state contribution may not exceed 50% of the Department's annual salary schedule established for the graduate civil engineer classification. *Ala. Code §§ 11-6-23.*

E. FUNDING FOR COUNTY ROADS AND BRIDGES

Funding for the construction, repair, and/or maintenance of county-maintained roads and bridges comes from a variety of federal, state, and local sources.

The Constitution of Alabama authorizes the levy of a 2½ mill county property tax for roads, bridges, and public buildings. *Ala. Const. § 215.* Additionally, subject to approval at a referendum and the county's constitutional debt limit, the county commission may issue bonds to provide for the construction and improvement of county-maintained road and bridges. In addition, the Legislature has enacted a number of local laws authorizing specific counties to levy gasoline taxes.

Aside from these revenue sources, there are few methods available to the counties to raise funds locally for highway purposes.

County Road and Bridge System

Therefore, counties are very dependent on the county portion of the state taxes earmarked for roads and bridges to finance county road and bridge construction, repair, and maintenance projects. A more detailed explanation of state funding for county roads and bridges is found in Chapter VIII.

Counties are also eligible to receive federal funds for certain approved projects. The Alabama Department of Transportation supervises and administers projects funded with federal funds. Additionally, *Ala. Code § 23-1-1* authorizes the Department to enter into necessary contracts and "to do all things necessary to secure to the state and its counties and municipalities the full benefits" of federal laws relating to road and bridge projects. Counties are typically required to contribute a 20% match for federal projects and must conduct such projects in compliance with federal laws and regulations. Counties are generally required to pay the administrative costs involved in such projects. Each county in the state has traditionally received an allocation of more than \$500,000 in federal monies through the Department, but there is no guarantee that this allocation will be made each year and the amount received is always subject to change. In fiscal year 2016-17, the annual distribution to counties was \$533,000, which is the same distribution received for several preceding years.

F. SPECIAL PROJECTS AND PROGRAMS

There have been several state-administered programs implemented over the years to provide special assistance to counties in addressing certain county road and bridge needs. For example, a constitutional amendment ratified in 2000 created a \$350,000,000 bond issue to provide for the replacement or repair of structurally-deficient county bridges. See, *Ala. Const. Amend. 666 and Amend. 668*.¹ The bonds were repaid with federal funds and the federal match was paid out of the state's portion of interest income from the Alabama Trust Fund. This allowed for the repair or replacement of almost 600 county roads and bridges in the state at no cost to the counties.

¹ These two constitutional amendments are identical.

The Alabama Transportation Rehabilitation and Improvement Program (ATRIP), an initiative of Governor Robert Bentley announced in 2012, provided almost \$1 billion in funding for the replacement of local bridges and the resurfacing of county and municipal roads. Approximately \$770 million was awarded for county projects. This grant program was funded with federal highway dollars, although counties were required to provide the 20% federal match.

To ensure that all counties were eligible to receive some of the benefits of ATRIP, legislation was passed in 2013 which allowed counties unable to meet the 20% local funding match required for ATRIP projects to participate in the Rural Assistance Match Program (RAMP), created pursuant to *Act 2013-80*. *See in particular Ala. Code § 23-1-177(c)*. The priority for RAMP counties was funding for the replacement of county bridges eligible for federal funds and posted for school bus traffic. Under RAMP, eligible counties could receive up to \$1 million in state funding to match \$4 million in federal funds, and could, at the option of the county, allow some monies to be expended on municipal projects.

G. ALABAMA TRANSPORTATION SAFETY FUND

In 2016, the Alabama Legislature enacted a new law creating the Alabama Transportation Safety Fund to provide for distribution of new gas and diesel fuel tax revenues enacted after January 1, 2016, and to set strict rules for how monies distributed to counties from any newly-enacted revenues can be utilized. *Ala. Acts No. 2016-150*. The Act requires regular reporting to the public on county road and bridge projects paid for with monies distributed from the Fund. *Act 2016-150* has similar restrictions and requirements for use of monies paid to the Alabama Department of Transportation (the Department) and to municipalities.

Under the Act, the first \$32 million derived from any diesel fuel tax designated as a revenue source for the Fund would be allocated

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for county infrastructure projects authorized under a bond issue program established in the Act. Additionally, \$500,000 of revenue designated to the Fund would be paid annually to each of the 67 counties in place of the current annual allocation of federal money paid to counties². The Act specifically provides that the Department may continue to allocate federal funds to county projects in its discretion or as required by federal law. The remaining proceeds of revenues designated to the Fund shall be distributed to the Department and the 67 counties utilizing the current distribution of gas tax revenues.

The Alabama Transportation Safety Fund sunsets on April 26, 2018, meaning that this law will have no effect if revenues to be paid into the Fund are not enacted by the Legislature prior to that date.

H. THE ALABAMA DEPARTMENT OF TRANSPORTATION

As noted above, the Alabama Department of Transportation plays a major role in many county road and bridge projects, particularly when such projects are funded, in whole or in part, with state and/or federal monies. The Department and its director have broad regulatory authority over the use of state and federal funds, including but not limited to, developing design standards, overseeing the development and bidding of projects, and execution and oversight of road and bridge contracts. *See generally Ala. Code § 23-1-20 et seq.* regarding the powers and duties of the Department and its director.

The general duties of the Department are set out in *Ala. Code § 23-1-40*. Some other provisions of particular interest to counties are set out below:

- *Ala. Code § 23-1-59* grants the Department the right and power to adopt all reasonable and necessary rules

² This would replace the \$533,000 counties currently receive but would be a guaranteed allocation as a provision of state general law.

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and regulations for the better construction, repair, and maintenance of public roads and bridges in Alabama. *See also Ala. Code § 23-1-1, Ala. Code § 23-1-56(e), and Ala. Code § 23-1-64(b).*

- *Ala. Code § 23-1-48* provides that when a county commission desires that a state road or bridge in the county be constructed or maintained with state aid, it shall make written application to the Department under rules and regulations that the Department may prescribe, and if approved, the county commission shall direct an engineer to prepare surveys, plans, specifications, and cost estimates and the Department may then appropriate out of state funds such part of the cost "as it may deem proper".
- *Ala. Code § 23-1-40(g)* provides that the Department shall have general supervision of any state funds apportioned to any county of the state for the construction and maintenance of all public roads, bridges, and culverts in each county.
- *Ala. Code § 23-1-40(e)* provides that the Department shall establish standards for the maintenance of roads and bridges which have been constructed with state aid.

The Alabama Department of Transportation also has very broad contracting powers and responsibilities.

- *Ala. Code § 23-1-1* authorizes the Department to enter into all necessary contracts and agreements with the U.S. government or other agency in accordance with acts of Congress relating to the construction, maintenance, and beautification of highways, bridges, tunnels, or ferries and to do all other things necessary to secure that the state and its counties and municipalities receive the full benefits provided by such acts.

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- *Ala. Code § 23-1-40(b)* authorizes the Department to cooperate or contract with any municipality or county in the paving or improving of any streets, highways, or walkways upon which a state educational or eleemosynary institution or property may front or abut.
- *Ala. Code § 23-1-53* authorizes the Department to contract with counties (or municipalities) to do any work in the construction, repair, and maintenance of roads, bridges, or highways in the state.
- *Ala. Code § 23-1-57* authorizes the Department to enter into contracts and agreements with adjoining states and the federal government relative to the acquisition, construction, maintenance, and repair of bridges between Alabama and an adjoining state.

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CHAPTER X

COUNTY GOVERNMENT POWERS, FUNCTIONS, AND AGENCIES

The duties and responsibilities of the county commission are many and varied. It would be impossible to provide an exhaustive list of the programs, services, and functions administered by the commission and carried out by county commission staff. Discussion of the financial administration and supervision of the county road and bridge system are addressed in separate chapters of this Handbook.¹ This chapter attempts to describe many of the other county government functions and programs which are administered, supervised, and/or operated under direction of the county commission.

A. ADMINISTRATION OF COUNTY OPERATIONS

The county commission has charge and responsibility for most of the administrative functions of county government. In addition to its financial duties as discussed in Chapter VII on Financial Administration, the county commission has control and responsibility for all county property, oversees all county personnel matters, and administers county-operated programs for the benefit of its citizens.

1. Chief Administrative Officer

The chief administrative officer (CAO) or “county administrator” oversees some or all of the administrative functions of county government, although the duties vary considerably depending on the structure of the county. *Ala. Code § 11-3-18* authorizes the county commission to employ a chief administrative officer and sets out some of the duties for this position. While this statute is not mandatory, every county has someone who serves in this role.

¹ Financial administration of the county budget and revenues is covered in Chapter VII and administration of the county road and bridge system is covered in Chapter IX.

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The law does not prescribe any particular mode of hiring the chief administrative officer and counties generally provide for this position through their county personnel policies. *Ala. Code § 11-3-18* was enacted in 2007 to recognize this important position statutorily and to authorize hiring someone for this position.

The law sets out some general duties of the CAO, but leaves great flexibility for the county commission to establish (by policy, practice, or local law) the other functions of this position. The general duties set out in *Ala. Code § 11-3-18* are to:

1. Keep and record minutes of all meetings of the county commission;
2. Have prepared and presented to the commission chair for proper execution all appropriate documents, such as resolutions, orders, contracts, or directives, as are necessary to carry out the actions of the county commission;
3. Maintain a detailed record of the financial status of the county which shall be kept up to date at all times and shall reflect the true status of all outstanding obligations of the county and the estimated revenue for the current fiscal year;
4. Perform any other duties related to accounting, auditing claims, issuing warrants, and information gathering as the county commission may deem necessary for the administration of the financial affairs of the county;
5. Serve as signatory for the county on all appropriate documents as authorized or directed by policy adopted by resolution of the county commission; and
6. Perform any other duties as may be assigned from time to time and under procedures established by the county commission.

2. Control and Responsibility for County Property

Ala. Code § 11-3-11(a)(1) provides that the county commission is to “direct, control, and maintain the property of the county as it may deem expedient according to law”. *See also Ala. Code § 11-14-2.* These and other statutory provisions grant the county commission very broad powers with regard to administration and maintenance of all real and personal county property which includes, but is not limited to the following:

- The courthouse and any courthouse annexes. *See e.g. Ala. Code §§ 11-3-11(a)(1), 11-14-9.*
- The county jail. *See e.g. Ala. Code § 11-14-10.*
- Any other buildings owned or leased by the county. *See e.g. Ala. Code § 11-14-2.*

This responsibility includes the requirement to provide office space, furnishings, and supplies for many county officials. Specifically, the county commission is statutorily required to provide housing and supplies for each of the following local officials and/or offices:

- The sheriff. *Ala. Code § 36-22-18.*
- Tax officials. *See e.g. Ala. Code §§ 11-12-14, 40-4-8, and 40-6A-5.*
- School board superintendent and staff. *Ala. Code § 16-9-24.*
- Local boards of registrars. *See e.g. Ala. Code § 17-3-10.*
- Courts and court personnel. *See e.g. Ala. Code § 11-3-11(a)(1). See also Alabama Rules of Judicial Administration, Rule 3.*

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The responsibility to control and maintain all property means that it is the county commission's responsibility to ensure all buildings and spaces are properly cooled or heated, have an adequate roof, are properly cleaned, and are safe for personnel and citizens. Additionally, pursuant to *Ala. Code § 11-3-11(a)(20)*, the commission is required to insure county property.² Because the county commission owns, controls, and insures all county property, it should always be a party to any contracts or agreements regarding county building purchases or leases.

Though the county commission has broad powers to control county property, that power has been curtailed by the Alabama Memorial Preservation Act of 2017. *See Ala. Code §§ 41-9-230 through 41-9-237*. The act prohibits the relocation, removal, alteration, renaming, or other disturbance of monuments, memorials, or other "architecturally significant buildings" located on public property that have been in place for forty or more years. For buildings so situated for at least twenty years but less than forty years, *Ala. Code § 41-9-235* outlines a waiver process to make such changes.

As the custodian of all county property, the county commission is generally responsible for the purchase, insurance, and upkeep of all automobiles, copiers, computers, and other personal property utilized in any county office or by any county official or employee. The county commission administers and oversees competitive bidding where required and is responsible for ensuring proper purchasing procedures required by the law and/or the Department of Examiners of Public Accounts are followed at all times. It is important that all purchases fall within the approved county budget. For these reasons, it is important that the county commission and other county officials and offices work together regarding the purchase, repair, and upkeep of all county property and purchases.

² Beginning in 2016, this insurance can be provided through the ACCA Liability Self-Insurance Fund for those counties that participate in the Fund. *See Ala. Code § 11-30-1 et seq.*

3. Contracting Party for County

Ala. Code § 11-1-10 authorizes the county commission “to enter into contracts . . . or any other form of agreement with the United States of America or any of its agencies, departments, bureaus, divisions, or institutions, with the State of Alabama or any of its agencies, departments, bureaus, divisions, or institutions and with any municipality or other county within or without the state.” These contracts can be for funding, services, materials, supplies, buildings, structures, and “any and all other benefits deemed for the public interest in the promotion of industrial, agricultural, recreational, or any other beneficial development.”

Ala. Code § 11-14-2 provides that the county shall have control of all property belonging to the county and directs the county commission chair to make titles and conveyances in accordance with orders of the county governing body. *Ala. Code § 11-14-4* provides that all county buildings are erected, maintained, and repaired under the direction of the county commission – and at its expense – and that the county is authorized to make all necessary contracts for this purpose. Additionally, *Ala. Code § 11-14-1* requires that all deeds, grants, or conveyances made to any officer or person for the use and benefit of the county vest title in the county.

These Code sections (and others) have consistently been cited by the Alabama Attorney General’s Office as support for the position of that office that the county commission should be a party to *any* contract affecting county property, funds, or programs. *See e.g. AG’s Opinion ## 2002-248, AG’s Opinion # 2003-032, and AG’s Opinion # 2011-020* regarding contracts for housing municipal or federal prisoners in the county jail. *See also AG’s Opinion # 99-187* holding that the sheriff does not have statutory authority to enter into a lease for real property nor own a building and *AG’s Opinion # 2001-202* holding that property conveyed to the sheriff is a conveyance for the use and benefit of the county and that it is the responsibility of the county commission to enter into contracts for the construction and maintenance of all county buildings. Where the contract involves areas that are the responsibility of

other officials, the consent of those officials is generally required. See e.g. AG's Opinion # 2003-106.

4. Personnel Administration

The role of the county commission in the administration of personnel matters is complicated, but extremely important to the efficient and effective operation of county government. Since the county commission establishes the budget for all county offices, it is responsible for appropriating monies for salaries and employee benefits and making sure all county employees are properly paid in a timely manner. As the office responsible for the administrative functions of county government, the county commission is responsible for ensuring compliance with federal and state personnel-related laws and regulations, including but not limited to each of the following:

- Alabama's Workers Compensation Act.
- The Fair Labor Standards Act.
- The Americans with Disability Act.
- The Family Medical Leave Act.
- Federally-compliant drug testing policies.
- Policies to prevent employment-related discrimination.
- Guidelines to avoid and/or report sexual harassment.

While in most counties great deference is given to the other elected officials regarding who to hire and the day-to-day operations of their offices, it is important that all county employees be subject to the county's rules and procedures regarding leave, holidays, and working hours. This is important to ensure there is compliance with state and federal labor laws; that benefit packages (such as retirement and health insurance) are properly provided; that state constitutional and statutory provisions related to employment,

ethics, and payment of monies are followed; that there is no violation of any employee's constitutional rights; and that all employees are treated fairly under the same system. *For a good discussion of these principles, see AG's Opinion # 2001-217.*

In part because of the county commission administrative role in these personnel matters and except for deputies and jailers working for the sheriff and/or local laws establishing special rules, employees in county offices are considered county employees subject to county personnel policy and rules regardless of the office in which they work and whether that office is administered by a county elected official. Generally – but with some local exceptions – this includes hiring and firing practices, procedures for evaluation and discipline of employees, annual and sick leave policies, establishing work day hours, setting county holidays and procedures for use, and compliance with rules and requirements related to workers compensation and work-place safety.

The employees of the sheriff's office generate unique challenges in the area of personnel since it has been determined by the U.S. Supreme Court and repeatedly upheld by federal and state courts that deputies and jailors are NOT county employees and, as such, cannot be required to come under the personnel policies of the county. However, they are paid by the county and receive the same benefits as county employees. As such, they are generally subject to the "payroll" rules of the county.

5. Workers Compensation and Liability Insurance for Counties

In addition to providing salary and benefits to county employees and overseeing the personnel functions of county government, the county commission also insures county employees for "on the job" injuries (workers compensation)³ and provides insurance to cover potential liability for actions taken in the performance of their

³ The vast majority of counties participate in the ACCA Workers' Compensation Self-Insurers' Fund to meet this obligation.

official duties.⁴ *See Ala. Code § 11-30-1 et seq.* Counties are also authorized to pay the costs of defending lawsuits against a county official when it is based on the official's performance in office and does not involve a willful or wanton personal tort or criminal offense. *Ala. Code § 11-1-9(a)*. These lawsuits frequently involve personnel issues.

6. Health Insurance and Retirement Benefit Plans

Counties are authorized to provide health and other insurance for employees (and officials) pursuant to *Ala. Code § 11-91-1 et seq.* The county can also provide insurance for retired county personnel under *Ala. Code § 11-91-8*. *See also Ala. Code § 36-34-1 et seq.* A majority of counties participate in the Local Government Health Insurance Program (LGHIP), which became effective January 1, 2015, and is governed by a separate board created pursuant to *Act 2014-401*. *See Ala. Code § 11-91A-1 et seq.* The program is administered by personnel at the State Employees' Insurance Board (SEIB) as authorized by *Ala. Code § 11-91A-79(h)*.

Ala. Code § 11-91-1 also allows counties to provide a retirement program for county employees through contract or otherwise. *Ala. Code § 36-27-6* allows counties to participate in the Retirement Systems of Alabama (RSA) program under the rules and procedures set out for participation in that program under Alabama law. *Ala. Code § 36-27-6.5* allows counties to participate in the Employees' Retirement System (ERS) to provide Tier I retirement benefits to their Tier II plan members. Such an election must be made by the county commission no later than May of 2021. The majority of counties in Alabama participate in the RSA.

7. Credit Card Agreements for Payment of County Services

Alabama law provides for offices within the county to establish procedures allowing for payment of taxes and fees by credit card. *See Ala. Code § 11-103-1 et seq.* Under the provisions of this statute, while the county officials administering these offices (i.e., judge of probate or tax official) have the discretion to set up

⁴ The majority of counties participate in the ACCA Liability Self-Insurance Fund for this coverage.

procedures for credit card use in their offices, it is the county commission, not the individual county officials, charged by law with selecting the vendor and entering into contractual arrangements with credit card processors to allow for their use. *Ala. Code § 11-103-2*. For a good discussion of how this statute operates and the roles of the county commission and other county officials, see *AG's Opinion # 2001-121*.

8. Appointment of License Inspectors

The county commission is authorized to appoint a license inspector and deputy license inspectors pursuant to *Ala. Code § 40-12-10*. The commission sets the compensation and duties for these personnel who are county employees.

The major duties of the license inspector set out in *Ala. Code § 40-12-10* are to enforce the licensing laws of the state and county through a variety of activities enumerated in the law. Under *Ala. Code § 40-12-10(k)*, license inspectors have certain arrest powers to enforce revenue laws.

Over the years, the Legislature has provided for additional duties of the license inspector under the discretion and direction of the county commission. For example, *Ala. Code § 13A-7-29(g)* provides that, upon approval of the county commission, the county license inspector shall have authority to issue criminal littering citations, although he or she is not authorized to make arrests in this instance.

The county commission may also designate a license inspector to enforce subdivision regulations pursuant to *Ala. Code § 11-24-1(d)* and to enforce notice requirements for planned timber operations utilizing county roads and access points. *Ala. Code § 23-1-80.1(j)*. Where counties utilize a license inspector for these functions, the county commission typically designates someone in the county highway department to serve in this role.

B. LAND USE REGULATION IN THE COUNTY

Counties in Alabama do not have broad and general land use regulatory authority under general Alabama law, although several counties have created some form of planning and zoning authority by local law.⁵ However, as set out below, the Legislature has granted limited authority to county governing bodies to address certain special circumstances related to use of land within the territorial jurisdiction of the county.

1. Subdivision Regulation

While there is no requirement in Alabama that the county commission adopt regulations regarding subdivision development, *Ala. Code § 11-24-1 et seq.* provides strong statutory authority for each county to regulate subdivision development within its territorial jurisdiction. The adoption and enforcement of subdivision regulations serves as an effective tool to ensure that new development in the unincorporated areas of the county will have properly-constructed infrastructure which provides a significant benefit to citizens purchasing property in the area. Subdivision regulations also provide the county commission with some assurance that any roads in the development accepted into the county road system will have been constructed to the standards established by the county commission upon the advice and recommendation of the county engineer. Amendments to the law have strengthened the county's ability to enforce their regulations and the penalties for violation have been set by statute at levels that encourage compliance with the law to avoid assessment of the penalties permissible under the law. *See Ala. Code § 11-24-3.*

If the county elects to adopt subdivision regulations, those regulations must comply with the statutory procedures and requirements for implementation and enforcement. Moreover, once the county has adopted subdivision regulations, it is

⁵ See e.g. *Baldwin* (Ala. Acts No. 91-719 and Ala. Acts No. 93-668), *Russell* (Ala. Acts No. 95-573), and *Shelby* (Acts 1965, 1523). Jefferson County has established planning and zoning authority through general act. *See Ala. Code § 11-52-30.*

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imperative that the governing body strictly and uniformly enforce those regulations.

Pursuant to legislation enacted in 2012, counties that have adopted subdivision regulations are now also responsible for regulation of subdivision development within the jurisdictional area of a municipal planning commission unless one of the exceptions in the law is satisfied. *See Ala. Code § 11-52-30 as amended by Acts 2012-297.* Pursuant to *Ala. Code § 11-52-30*, the territorial jurisdiction of a municipal planning commission is as follows:

[A]ll land located in the municipality and all land lying within five miles of the corporate limits of the municipality and not located in any other municipality; except that, in the case of any nonmunicipal land lying within five miles of more than one municipality having a municipal planning commission, the jurisdiction of each municipal planning commission shall terminate at a boundary line equidistant from the respective corporate limits of such municipalities.

A committee of county engineers formed through the Association of County Engineers of Alabama (ACEA) has developed “model subdivision regulations” to serve as a guide for counties to use in implementing subdivision regulations or revising existing regulations to comply with the changes in the law. These model regulations are reviewed periodically, particularly following any amendments to the law that affect the role of the county commission in regulating subdivision development. A copy of the model regulations is available through the ACEA web site (www.acea-online.org).

2. Flood Prone Areas

The Legislature declared in *Ala. Code § 11-19-2* that there is a “clear and definite public need for a program to provide flood insurance coverage in flood-prone areas in the state.” To this end, the Legislature has granted the county commission broad powers

to control and regulate land use in flood-prone areas outside the corporate limits of a municipality. *See Ala. Code § 11-19-1 et seq.* “Flood-prone areas” is defined in *Ala. Code § 11-19-1* as, “Any area with a frequency of inundation of once in 100 years as defined by qualified hydrologists or engineers using methods that are generally accepted by persons engaged in the field of hydrology and engineering.”

Under *Ala. Code § 11-19-2*, the purpose of the statute is to provide each county with a comprehensive land-use management plan for flood-prone areas by providing authority to address the following:

- a. Constricting the development of land exposed to flood damage in flood-prone areas;
- b. Guiding development of proposed construction away from locations threatened by flood hazards;
- c. Assisting in reducing damage caused by floods; and
- d. Improving long-range management and use of flood-prone areas.

The law allows the county commission to adopt zoning ordinances, subdivision regulations, building codes, health regulations and other applications and extensions of the normal police power to provide safe standards of occupancy for prudent use of flood-prone areas under the guidelines and procedures set out in the law. *Ala. Code § 11-19-3.*

3. Airport Zoning

Ala. Code § 4-6-4 authorizes counties (and municipalities) to adopt airport zoning regulations in order to prevent airport hazards within an airport hazard area within its zoning jurisdiction. *See generally Ala. Code § 4-6-1 et seq.* The zoning jurisdiction of the county is all unincorporated areas in the county, except within the police jurisdiction of any municipality and the area within two miles of an airport owned or operated by a municipality when said

municipality exercises or declares its intention to exercise zoning control over these areas unless provided otherwise by local law.⁶

“Airport hazard” is defined in *Ala. Code* § 4-6-2(2) as “Any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at any airport or is otherwise hazardous to such landing or taking-off of aircraft.” An “Airport hazard area” is “Any area of land or water upon which an airport hazard might be established if not prevented as provided in [the law].” *Ala. Code* § 4-6-2(3).

The procedures for the adoption and enforcement of airport zoning regulations are set out in *Ala. Code* §§ 4-6-4 through 4-6-15.

4. Building Codes

There are two general statutory provisions authorizing counties to adopt building codes: the Home Builders Licensure Law found at *Ala. Code* § 34-14A-1 *et seq.* and the law on the state minimum building standards code found at *Ala. Code* § 41-9-160 *et seq.*⁷

a. Authority under Home Builders Licensure Law

Ala. Code § 34-14A-12 provides that the county commission is authorized and empowered to adopt building laws and codes by ordinance to apply in the unincorporated areas of the county. The building laws and codes shall not apply within any municipal police jurisdiction in which the municipality is exercising its building laws and codes without the express consent of the municipality, but may apply within the corporate limits of a municipality with the express consent of the governing body of the municipality. Under this statutory provision, the county may employ building inspectors to

⁶ This provision does not apply to counties having a population of not less than 54,500 nor more than 56,000 according to the 1970 federal decennial census.

⁷ *Ala. Acts No. 2019-482* expands the duties of the Homebuilders Licensure Board and empowers it to adopt a statewide residential building code. That code does not supersede or exempt builders from county building codes. *Ala. Code* § 34-14A-12.

enforce its laws or codes and may exact fees to be paid by owners of property inspected.

Ala. Code § 34-14A-12 also authorizes the county commission to condemn buildings or structures dangerous to the public, may prohibit the use of such buildings, and may abate such buildings as a nuisance. Counties abate these nuisances using the same authority and procedures municipalities utilize pursuant to *Ala. Code § 11-53A-20 to § 11-53A-26*.

b. Minimum Building Standards Code

Ala. Code § 41-9-166 provides that any county commission may, by resolution, adopt and enlarge the applicability of any model building code published by the Southern Building Code Congress International and the National Electrical Code published by the National Fire Protection Association. Municipalities are granted the same authority under this section.

Prior to adoption, the county commission shall publish notice that it proposes to adopt a code in a county newspaper once a week for four weeks and posts notice at the courthouse door. The county cannot apply the building code to state buildings and construction of public schoolhouses. The model building codes adopted by the county shall only apply to structures and facilities on the customer's side of the electric meter and not to any electric power generation, transmission, or distribution facilities on the electric service provider's side of the electric meter.

5. Health and Safety Powers

As discussed in Chapter I, the Alabama Limited Self Governance Act found at *Ala. Code § 11-3A-1 et seq.* authorizes the county commission to establish programs to abate certain health and safety nuisances in the unincorporated areas of the county if the power to adopt such ordinances is approved by voters in the unincorporated areas of the county at a referendum held in conjunction with a primary, general, or special election called for

another purpose. *See Ala. Code § 11-3A-5.* If the county obtains these powers through local referendum, *Ala. Code § 11-3A-2(a)* provides that it can establish programs for the abatement of nuisances related to weeds, junkyards, litter and rubbish, noise, pollution, unsanitary sewage, and animal control.

The law sets out procedures for adopting ordinances if the authority is granted by local referendum. *Ala. Code § 11-3A-3.* The law also allows for a local referendum repealing the county's authority to abate these health and safety nuisances. *Ala. Code § 11-3A-6.*

C. COUNTY EMERGENCY MANAGEMENT AGENCY

Ala. Code § 31-9-10 requires the county to establish and maintain a local emergency management program to perform emergency management functions within its territorial limits. County responsibilities in this area include but are not limited to:

- Management and oversight of local disasters and emergencies.
- Coordination with the Alabama Emergency Management Agency (AEMA) and Federal Emergency Management Agency (FEMA) on issues such as funding, mitigation programs, training and compliance with state and federal laws and regulations.
- Coordination with AEMA on the development and implementation of state and local emergency management plans as required under *Ala. Code § 31-9-6(2)*.⁸

⁸ See Chapter XI for further discussion of the Alabama Emergency Management Agency and coordination with counties regarding local emergency management plans and other programs.

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- Development, implementation, and oversight of local disaster-preparedness and mitigation programs.
- Coordination with volunteer fire and rescue squads regarding delivery of services and disaster-preparedness.

Ala. Code § 31-9-10 authorizes the county commission to appoint a director “who shall have direct responsibility for the organization, administration, and operation of such local organization for emergency management, subject to the direction and control of such governing body”. Under the direction of the county commission, the county emergency management director works closely with AEMA to coordinate all emergency management functions in compliance with state and federal law, and works with the county administrator and county engineer in managing the programmatic and financial aspects of preparation for and response to disasters and emergencies that occur in the county.

In order to assist counties in being able to employ and retain professional and experienced local emergency management directors, the Alabama Legislature enacted a law in 2007 to provide a state supplement of up to \$12,000 where necessary ensure a minimum salary of \$40,000 for certified local emergency management directors. *See Ala. Code § 31-9-61 et seq.* The law sets out minimum requirements to become a certified local emergency management director, which include among other things, completion of an educational certification program administered by AEMA. *Ala. Code § 31-9-61(a)(3)*. In counties where the county emergency management director makes \$40,000 or more without the state supplement, the law allows for an additional allocation of federal funds for local mitigation, planning, and program purposes under a formula set out in the law. *Ala. Code § 31-9-62(c)*.

D. COUNTY SOLID WASTE PROGRAMS

Alabama law authorizes the county commission to establish public solid waste collection and disposal facilities. *See Ala. Code § 22-27-3*. The county can provide such services by contract and may include house-to-house service or the placement of regularly serviced and controlled bulk refuse receptacles within reasonable distance. *Ala. Code § 22-27-3(a)(2)* also authorizes the county to implement and operate a mandatory solid waste services participation program under procedures set out in the law. The law does include, however, certain exemptions from participation in a mandatory program established by the county. *See Ala. Code §§ 22-27-3(a)(3) and § 22-27-3(g)*. The county may bring civil action in circuit court to compel such participation in a mandatory program or for collection of unpaid fees. *See Ala. Code § 22-27-5*.

Ala. Code § 22-27-3(a)(4) provides that the county cannot provide solid waste collection and disposal services within the corporate limits of a municipality without the express consent of the municipal governing body nor shall any municipality provide solid waste collection and disposal services outside its corporate limits without the express consent of the county commission.

Pursuant to *Ala. Code § 22-27-5*, the county commission may establish fees for the purpose of administering a solid waste program and may suspend services if fees are not paid within 30 days after due. Fees collected under this section can **only** be utilized for the solid waste program. *See also Ala. Code § 22-27-5.1*.

The county may enter into mutual agreements or contracts with other counties, municipalities, corporations, or individuals to jointly or individually collect, haul and/or dispose of solid wastes generated within the cooperating area. *See Ala. Code § 22-27-3(a)(1)*. Contracts are subject to the competitive bid law, except that, pursuant to *Ala. Code § 41-16-51(a)(10)*, contracts for renewal of a collection service do not have to be rebid if there are

no material changes in the price or services included in the original contract.

The county commission may designate a solid waste officer to administer and enforce its solid waste programs. *See Ala. Code § 22-27-3(b)*. The solid waste officer shall have the same powers of enforcement as license inspectors under *Ala. Code § 40-12-10*, which includes the ability to issue citations to delinquents.

E. LOCAL APPROVAL OF LANDFILL APPLICATIONS

Ala. Code § 22-27-48 provides that the Alabama Department of Environmental Management (ADEM) cannot consider an application for a new or modified permit for a landfill facility unless the application has been approved by the county commission or municipality in which the landfill is or would be located pursuant to a process outlined in *Ala. Code 22-27-48.1*.⁹ The law sets out the following variables that must be considered by the local government considering the application:

1. The consistency of the proposal with the jurisdiction's solid waste management need as identified in its plan;
2. The relationship of the proposal to local planned or existing development, to major transportation arteries, and to existing state primary and secondary roads;
3. The location of a proposed facility in relationship to existing industries in the state that generate large volumes of solid waste, or the relationship to the areas projected for development of industries that will generate solid waste;
4. Costs and availability of public services, facilities and improvements required to support a proposed facility and protect public health, safety and the environment;

⁹ *See Ala. Acts No. 2017-366*

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5. The impact of a proposed facility on public safety and provisions made to minimize the impact on public health and safety; and
6. The social and economic impacts of a proposed facility on the affected community, including changes in property values, and social or community perception.

The application for local approval shall include an application fee equal to 20% of the application or permit fee required by ADEM. A renewed application for local approval submitted within 18 months of an application being denied or rejected shall be accompanied by an application fee in an amount equal to 50% of the application or permit fee required by ADEM.

The county commission or other local governing body considering the application must conduct a public hearing prior to acting on the application. The hearing is held only after public notice and opportunity for public comment is provided.

F. CONDEMNATION OF PROPERTY FOR COUNTY PURPOSES

Ala. Code § 11-80-1 authorizes counties to condemn property for public building sites or additions, enlargements of sites already owned, public roads or alleys, material for the construction of public roads or streets, or any other public use. Additionally, *Ala. Code § 23-1-82* grants counties the right of eminent domain for the purpose of establishing and changing roads, bridges, and ferries in the county. The general procedures for condemnation, found in Alabama's eminent domain law at *Ala. Code § 18-1A-1 et seq.*, apply to any actions to condemn property for public purposes.

Alabama's Constitution addresses the governmental power of eminent domain and provides that no property shall be taken without just compensation. *See Ala. Const. §§ 23 and 235.* Additionally, the Legislature has enacted strong restrictions on the

exercise of this power by prohibiting its use for purposes of private retail, office, commercial, industrial, or residential development; where “primarily for enhancement of tax revenue; or for transfer to a person, non-governmental entity, public-private partnership, corporation, or other business entity.” *See Ala. Code §§ 11-80-1(b) and 18-1B-2.*

Ala. Code § 11-80-1(c) provides that if property condemned for an authorized purpose is ever used for a purpose other than that for which it was condemned or for some other public use, it must be offered for sale either to the owner from whom it was taken or to the owner’s heirs or assigns, if any. These restrictions do not apply to land found to blight an area covered by a redevelopment or urban renewal plan. *See Ala. Code §§ 11-80-1(b) and 24-2-2.*

G. COUNTY RESOURCES FOR ECONOMIC DEVELOPMENT PROJECTS

As discussed elsewhere in this Handbook,¹⁰ counties are frequently called upon to provide tax abatements or needed infrastructure to companies and industries considering location or expansion within the county. Efforts in the area of economic development are increasingly important to county government and the ability to offer financial and structural incentives is crucial to successful recruitment of new or expanding business.

Ala. Const. Amend. 772, ratified in 2004, provides many of the tools needed to be successful in this area by granting counties fairly broad powers to use county resources for the acquisition and establishment of economic and industrial development projects. Under this amendment, the county may do any of the following without violating the constitutional provision prohibiting counties from using public funds for private purposes ***provided*** it follows the procedures set out in the Amendment:

¹⁰ See in particular, the section in Chapter XI discussing industrial and economic development boards and authorities.

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- Acquire, sell, or lease real property and equipment using public funds.
- Lend its credit or grant public funds or things of value for the promotion of economic and industrial development.
- Become indebted and issue bonds.

The procedures involved to approve use of public funds pursuant to *Ala. Const. Amend. 772* include each of the following:

- The action must be approved at a public meeting of the county commission following at least seven days notice published in the newspaper of largest circulation in the county.
- The notice must describe the proposed action in “reasonable detail” which includes description of the public benefits sought to be achieved and identifying for whom the county will lend its credit or grant public funds or thing of value.
- The county commission must adopt a resolution attesting that there has been a determination by the body that the expenditure will serve a “valid and sufficient public purpose”.

While this amendment has broad application, it is important that counties carefully follow all steps for authorizing any expenditure of public funds authorized in the amendment. Additionally, counties must ensure that actions taken are permissible under *Ala. Const. Amend. 772*.

Many counties also have local constitutional amendments providing similar authority as that granted in *Ala. Const. Amend. 772*. To address these local constitutional amendments, *Ala. Const. Amend. 772* provides in subsection (d) that, “Any local

constitutional amendments previously adopted and any local law enacted pursuant to such amendment shall remain in full force and effect.”

H. AMBULANCE SERVICE

Counties are authorized to establish, maintain, and operate an ambulance service within the county. *Ala. Code § 11-87-1*. Additionally, this Code section authorizes counties and municipalities to enter into joint agreements for the provision of ambulance services. The county may contract for the service pursuant to *Ala. Code § 11-87-3*. The county may appropriate funds to pay for the ambulance service and/or charge fees for the service. *Ala. Code §§ 11-87-2 and 11-87-4*.

There are other entities within the county that have authority to enter into agreements to provide ambulance services. Emergency communications districts (911 districts) are authorized to enter into contracts for dispatching services pursuant to *Ala. Code § 11-98-4(f)(6)*. Additionally, county hospitals or health care facilities sometimes provide for these services by contract or otherwise.

I. ANIMAL IMPOUNDING FACILITIES

Every county is required to provide a suitable facility for impounding dogs, cats, and ferrets running at large. *Ala. Code § 3-7A-7*. This statutory requirement can be met by contracting with a private facility to provide the impounding services. Many counties contract with a private animal shelter or veterinarian. *Ala. Code § 3-7A-7* also provides that every municipality with a population over 5,000 in which the impounding facility is not located shall maintain a suitable pound or contribute their pro rata share to the staffing and upkeep of the county facility.

Pursuant to *Ala. Code § 3-7A-8*, animals may be humanely destroyed and disposed of when not redeemed by the owner within seven days after notice has been given to the owner that the animal is being held. To redeem an animal, the owner shall pay for the

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immunization of the animal, pay a penalty if a certificate of current immunization cannot be produced, and pay for the board of the animal for the period for which it was impounded.

Ala. Code § 3-1-5(a) provides that owners shall keep dogs confined at all times. *Ala. Code § 3-1-5(b)*, however, provides that this law shall not apply in any county until it has been adopted by the county commission. Additionally, it shall not apply to the running at large of a dog within the corporate limits of a municipality that requires a license tag to be kept on dogs.

In 2018, the Legislature passed “Emily’s Law” to create a process by which to declare dogs dangerous and establish a uniform set of requirements on owners of dogs so designated. The law also establishes a uniform process that allows county attorneys to initiate proceedings to impound or humanely euthanize dogs if necessary. *Ala. Code § 3-6A-1 et. seq.*

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CHAPTER XI

OTHER GOVERNMENTAL AGENCIES AND ENTITIES

A. STATE AGENCIES

1. Alabama Emergency Management Act

Ala. Code § 31-9-1 et seq. provides for the State Emergency Management Agency (AEMA), and sets out the powers of the agency, its director, and the governor in relation to emergencies within the state. Under *Ala. Code § 31-9-6(2)*, AEMA is charged with the development of a comprehensive plan and program for the emergency management of this state which is integrated and coordinated with the emergency management plans of the federal government and other states to the fullest possible extent. Additionally, AEMA works with counties for the development and implementation of integrated and coordinated local emergency management plans and programs.

Ala. Code § 31-9-81 established the Statewide Emergency Notification System in coordination with AEMA and the Alabama Disaster Recover Program Committee. The program is to be funded by state dollars through the Alabama Disaster Recovery Fund, and the Alabama Disaster Recovery Program Committee oversees it. *Ala. Code § 31-9-87*.

Counties in Alabama work very closely with AEMA both in the development and implementation of emergency response planning and mitigation programs, and in response to emergencies which occur in the state. AEMA is the state agency that coordinates with the Federal Emergency Management Agency (FEMA) and any available federal funds for grants or disaster relief are administered at the state level through AEMA.

As discussed in Chapter X, each county has a local emergency management agency overseen by the county commission pursuant to *Ala. Code § 31-9-10*. The county emergency management

director works closely with AEMA in the development, implementation, and management of programs, the application and administration of state and federal funding and grants, and FEMA compliance regarding disaster preparedness, response, and recovery. Additionally, AEMA governs the education certification program for county emergency management directors authorized under *Ala. Code § 31-9-61 et seq.*

Counties have worked closely with AEMA in recent years to develop bid specifications and contracts for a county joint bid project awarding pre-disaster debris removal and debris removal monitoring services contracts as authorized in the competitive bid law.¹ Having these contracts in place prior to an event necessitating the removal of debris by the county has served to reduce the costs of these contracts and has aided counties significantly in being prepared to respond quickly to a disaster.

2. Alabama Law Enforcement Agency

The Alabama Law Enforcement Agency (ALEA) was created by *Act 2013-67* and provides for the consolidation and realignment of 12 state law enforcement agencies and functions into one entity. *See Ala. Code § 41-27-1 et seq.* The law became fully implemented on January 1, 2015. ALEA is responsible for the functions and missions of the Alabama Department of Homeland Security, Alabama Department of Public Safety, Alabama Bureau of Investigations, the Fusion Center, the Criminal Justice Information Center, Marine Police, Alcoholic Beverage Control Board Enforcement, Alabama Department of Revenue Enforcement, Forestry Commission Investigations, Agricultural and Industry Investigations, Public Service Commission Enforcement, and the Office of Prosecution Service Computer Forensics.

Ala. Code § 41-27-2 creates the Secretary of the Alabama State Law Enforcement Agency who serves as the appointing authority and executive head of ALEA and as the appointing authority and

¹ See *Ala. Code § 41-16-50(b)* and Chapter VII for more information on county joint bid programs.

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department head of the Department of Public Safety and State Bureau of Investigations. The secretary may delegate all or part of his or her functions to the Director of the Department of Public Safety and the Director of the State Bureau of Investigations, respectively. *Ala. Code § 41-27-2(b)(1)* provides that the secretary shall be appointed by and hold office at the pleasure of the Governor.

3. Alabama Department of Homeland Security

The Alabama Department of Homeland Security was established as a separate agency in 2003. *See Ala. Acts No. 2003-276*, codified at *Ala. Code § 31-9A-1 et seq.* In 2013, the Alabama Legislature transferred all functions of the Alabama Department of Homeland Security to the Secretary of the Alabama State Law Enforcement Agency. *See Ala. Acts No. 2013-67. Ala. Code § 41-27-2(d)* provides that, effective March 19, 2013, the secretary of the Alabama Law Enforcement Agency shall serve as the Homeland Security Advisor and assume all duties of the Director of Homeland Security, including responsibility for coordinating, designing, and implementing Alabama's program for homeland security, including immigration enforcement. Pursuant to this section, any reference in the law to the authority of the Director of Homeland Security shall be deemed a reference to the Secretary of the Alabama State Law Enforcement Agency.

4. Alabama Department of Environmental Management

The Alabama Department of Environmental Management (ADEM) is created and governed by the provisions of *Ala. Code § 22-22A-1 et seq.* The purpose of this law is to provide for a comprehensive and coordinated program of environmental management in the state. *Ala. Code § 22-22A-2.* The agency is headed by a director appointed by the Environmental Management Commission established in *Ala. Code § 22-22A-6.* The director serves at the pleasure of the Commission. *See Ala. Code § 22-22A-4.*

The general powers and responsibilities of ADEM are set out in *Ala. Code § 22-22A-5.* A few of the more important functions of the department as follows:

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- Administer appropriate permitting, regulatory, and enforcement functions.
- Promulgate rules, regulations, and standards to carry out the environmental management laws, including for the charge and collection of fees as appropriate.
- Serve as the state agency responsible for administering federally approved or federally delegated environmental programs.
- Establish and maintain regional or field offices to provide more effective and efficient services to the citizens of the state.
- Issue, modify, suspend, or revoke orders, citations, notices of violation, licenses, certifications, or permits.
- Hold administrative hearings relating to any provision of the law or its administration.
- Apply for, accept, receive, and administer federal and private grants or funds for the purpose of carrying out any of the functions, purposes, or provisions of the law.

The Department is divided into four main divisions: Air; Coastal Area Management; Land; and Water. Counties work closely with ADEM on many environmental issues and programs, including but not limited to the following:

- Environmental studies as required for road, bridge, and other construction projects.
- Permitting as required by state and federal law.
- Landfill permitting.

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- Development and approval of local solid waste plans.
- Scrap tire remediation.
- Other mandatory and/or permissible environmental programs.

5. Alabama Cooperative Extension System

Ala. Code § 2-30-1 creates a single statewide Alabama Cooperative Extension System (ACES) which is operated in connection with Auburn University and A&M University. *See generally Ala. Code §§ 2-30-1 et seq.* The system is administered and supervised by a director selected and appointed by the President of Auburn University and the President of Alabama A&M University, with the approval of their respective boards of trustees. The state director has authority, subject to the policies of the appropriate university, to appoint, discharge, and fix the compensation of all employees of the extension service. *Ala. Code § 2-30-3.*

ACES works to aid in the dissemination of useful and practical information on subjects relating to agriculture, forestry and natural resources, family and individual well being, youth development, community and economic development, and urban affairs. Additionally, it provides aid in securing for Alabama the full benefit of federal funds available for extension work in agriculture and home economics. *Ala. Code § 2-30-2.*

Agricultural extension work is financed by federal, state, and local funds. The state makes regular appropriations for ACES in the education trust fund budget, and from time to time makes supplementary appropriations for specific purposes. Counties may appropriate county funds to be used in cooperative extension work. *Ala. Code § 2-30-23.* A portion of the state sales tax receipts distributed among the counties may also be used for extension services in cooperation with the state and federal agencies. *Ala. Code § 40-23-35(c).*

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In order to provide services throughout the state, there are extension service agents in each county, with one agent in each county serving as coordinator of the county extension staff. Extension agents specializing in agricultural programs direct farm demonstration work in the county and assist in disseminating the information compiled by the extension specialists at Auburn University and Alabama A&M University. These extension agents supervise 4-H club work and give advice and assistance to farmers in regard to such matters as animal husbandry, raising poultry, horticulture, landscape gardening, entomology, forestry, soils, crops, and marketing farm products. Other county extension agents specialize in home economics. County agents are also involved in the administration of the community resource development program.

More information about ACES and each county office can be obtained from the Alabama Cooperative Extension System website: www.aces.edu.

B. COUNTY-CREATED COMMISSIONS AND PUBLIC CORPORATIONS

1. Industrial and Economic Development Authorities

Ala. Code § 11-3-11(a)(19) authorizes the county commission to set aside, appropriate and use county funds or revenues for the purpose of locating and promoting agricultural, industrial and manufacturing plants, factories, and other industries in the county. It is also authorized to enter into contracts with any person, firm, corporation, or association to carry out these purposes. There are several statutory provisions authorizing the creation of industrial and economic development boards aimed at the promotion and retention of industrial and economic development in the state.

Ala. Code § 11-20-1 et seq. provides for the incorporation and powers of an industrial development board in the county to promote industry, develop trade, and further the use of agricultural products and natural and human resources of the state. *Ala. Code §*

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11-92A-1 et seq. is similar, authorizing the formation of county industrial development authorities as “independent public corporations having as their general purposes the promotion of industrial development and having the power to issue bonds.” *Ala. Code § 11-92A-2*. Municipal industrial development boards are provided for in *Ala. Code § 11-54-80 et seq.* Each of these statutes sets out rules and procedures related to the structure, administration, and powers of the county-created boards. The county commission is usually responsible for appointment of board members and frequently some member of the county commission will serve as a member of the board of these industrial and economic development boards and commissions.

Industrial and economic development boards serve an important role for counties, and work closely with the county commission and other local governmental entities to search out new or expanding industries to locate in the county and to negotiate with potential businesses to bring industry into the area. Counties are regularly asked to provide assistance with infrastructure and other needs of the business and to authorize various tax abatements or exemptions in exchange for the business selecting the county. The local industrial and economic development boards typically serve as the liaison for these negotiations.

As noted elsewhere in this handbook, counties do have statutory authority to abate taxes under certain circumstances. *See e.g. Ala. Code § 40-9B-5*. Municipalities also have the power to abate taxes, but they cannot abate county taxes unless they also abate a corresponding municipal tax. *Ala. Acts 2016-405*. Additionally, *Ala. Acts No. 2018-475* reauthorized counties’ ability to grant tax abatements for date processing centers as outlined in *Ala. Acts No. 2012-210*. *See Ala. Code § 40-9B-5(b) and (c)*.

Ala. Const. Amend. 772 grants counties fairly broad powers to use county resources for the acquisition and establishment of economic and industrial development projects.² Additionally, many counties

² See Chapter X for further discussion of *Ala. Const. Amend. 772*.

have local constitutional amendments that grant similar powers to use county resources for economic development purposes under certain circumstances.

2. Industrial Parks

Ala. Code § 11-23-1 authorizes the county commission to establish industrial parks in the unincorporated areas of the county under the procedures set out in the statute. *See Ala. Code § 11-23-1 et seq.* generally regarding the creation and function of industrial parks. An industrial park may include any compact body of land which is used exclusively for industrial purposes or which is primarily suited for industrial development. *Ala. Code § 11-23-2.* Once an industrial park has been designated, nothing that is not industrial in nature can be located in the area. *Ala. Code § 11-23-4.*

Under *Ala. Code § 11-23-6(a)*, industries that locate in the industrial park are responsible for maintaining their own premises. The county commission usually provides services related to streets, utilities, and police and fire protection. However, agreements between industries and/or the county for provision of these services is authorized under *Ala. Code § 11-23-6(b)*.

Ala. Code § 11-23-6(b) provides that no industrial park shall be subject to municipal annexation, nor considered part of the police jurisdiction of any municipality. All industrial parks shall be subject to the jurisdiction of the sheriff and courts of the county in which they are located.

3. Public Building Authorities

Ala. Code § 11-15-1 et seq. authorizes counties to form public building authorities to provide buildings for use by the county in the performance of its governmental and public functions. Under this statute, the corporation is granted all powers necessary to accomplish its purposes, including the authority to lease its buildings to the county and to issue interest-bearing revenue warrants to pay the project costs. *Ala. Code §§ 11-15-8 and 11-15-9.* The county is authorized to pay rentals out of its current revenues for the facilities leased from the corporation. The

corporation's securities are payable solely from its rentals and do not constitute a debt of the county. *Ala. Code § 11-15-9*. These authorities have been created in some counties to erect a new courthouse and jail without the county having to issue general obligation bonds.

4. Utility Services

There are several statutory provisions in Alabama's general law that allow counties (and municipalities) to provide for various utilities within their jurisdiction, either through the establishment or acquisition of a system operated by the county or through the creation of a public corporation to provide such services.

- *Ala. Code § 11-81-160 et seq.* authorizes counties to acquire a water works system, a sanitary sewer system, a gas system, and/or an electric system.
- *Ala. Code § 11-21-1 et seq.* authorizes a county to purchase or acquire, and to operate, and to assume any indebtedness connected with any waterworks plant or water distribution system located in the county and owned by any municipality in the county or by a public corporation.
- *Ala. Code § 11-88-1 et seq.* authorizes counties to create water, sewer, and/or fire protection authorities for the purpose of establishing and operating water systems, sewer systems, and fire protection facilities in order to provide such services within the county.
- *Ala. Code § 11-89-1 et seq.* authorizes the creation of water, sewer, solid waste, and fire protection districts.
- *Ala. Code § 11-3-11(a)(15)* authorizes counties to lay sewer trunk lines and to construct sewage disposal plants.

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The statutes creating the authority to establish these systems and corporations have detailed provisions related to the rules and procedures for creation, maintenance, and funding of the corporation and/or programs authorized in the law. This includes establishing provisions for incorporating the board or authority, setting out procedures for appointment of the board of directors, and setting out the powers and duties of the board.

Forming public corporations to provide these services can be very beneficial to the county commission because the statutes authorizing their formation usually allow for financing and funding opportunities that the county might not have – and ensure these important services are provided to the citizens of the county without requiring direct administration and supervision by the county commission. Counties need to carefully follow all procedures set out in the applicable statute when creating these systems and/or when appointing board members to serve as the governing body of these programs.

5. Airports and Airport Authorities

Ala. Code § 4-4-1 et seq. authorizes counties and municipalities to establish and operate airports within their territorial jurisdiction.³ Under *Ala. Code § 4-4-6*, a county may acquire privately-owned lands for airport purposes through eminent domain or by purchase, or gift, and may develop such land into an airport and improve, operate, and regulate the airport and its facilities. The commission is authorized to adopt regulations for governance of the airport, prescribe penalties for violations of regulations, and establish and collect fees and charges for the use of the airport or any airport equipment or facility. *Ala. Code § 4-4-7*. A county may issue bonds either to finance the acquisition of lands for airport purposes, or to extend, enlarge, or improve an existing airport after the voters have approved the proposal at an election held for that purpose. *Ala. Code § 4-4-11*. *Ala. Code § 4-4-12* authorizes counties to enter into contracts with each other (or with

³The definition of "municipality" in *Ala. Code § 4-4-1(5)* is "Any county, city, town or incorporated village of the State of Alabama."

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municipalities) for the establishment and operation of joint airports. The statute also authorizes and regulates the issuance of county general obligation bonds, warrants, and certificates of indebtedness for airport purposes. *See e.g. Ala. Code §§ 4-1-1 and 4-5-1 et seq.*

In addition to the above, Alabama law allows counties to authorize or participate in the incorporation of airport authorities to establish and operate airports, heliports, and other related facilities. *See Ala. Code § 4-3-1 et seq. See also Ala. Code § 4-3-40 et seq.* for an alternative approach to incorporating an airport authority. An airport authority may issue revenue bonds to finance its activities, with the bonds payable from the revenues derived by the authority from the operation of its airport and other facilities or property. An authority organized under the statute has the same zoning powers, with respect to unincorporated territory as are conferred on municipalities. *See e.g. Ala. Code § 4-6-4.*

6. County Hospitals and Health Care Authorities

County hospitals and health care authorities may be established in Alabama under several different laws that authorize a county to organize one or more public corporations to acquire, own, and operate public hospitals and other public health facilities within the county or a portion of the county. *See e.g. Ala. Code § 22-21-70 et seq., Ala. Code § 22-21-100 et seq., Ala. Code § 22-21-170 et seq., and Ala. Code § 22-21-312 et seq.* Since there are several different methods that can be utilized for establishing county hospitals and/or health care authorities (or boards), counties must be careful to ensure they are complying with the statute applicable to their facility or authority when establishing programs, providing funding, or appointing boards or when addressing issues or questions related to the facility or authority.

The statutes allowing for the formation and operation of county hospitals and health care boards and facilities typically allow the public corporation organized to acquire, construct, equip, enlarge, improve, maintain, and operate facilities authorized by the law. Additionally, these statutes have detailed provisions related to the

rules and procedures for creation, maintenance, and funding of the programs, procedures for incorporating the board or authority, procedures for appointment of the board of directors, and an enumeration of the powers and duties of the board. They also address financing authority and possible funding sources for operation of the facilities and/or repayment of debt.

7. Solid Waste Authorities

Ala. Code § 11-89A-1 et seq. authorizes the creation of solid waste authorities by counties and municipalities under the procedures set out in the statute. The “legislative findings” setting out the need and purpose for these authorities states, in part, the following:

[I]n order to provide for the collection and disposal of solid waste and to encourage planning of solid waste collection and disposal service and resource recovery through the development of systems for the recovery of material or energy from solid waste, it is necessary and desirable to authorize the creation by counties and municipalities (or any two or more thereof) in the state of authorities which will have the power to issue and sell bonds and notes and using the proceeds of such bonds and notes to acquire and construct such facilities.

As with other statutes allowing for the creation of public corporations to provide services to citizens in the county, this statute includes detailed procedures for incorporating the organization and creating and appointing a board of directors for governance of the authority. The law also sets out the powers and duties of a solid waste authority.

See also the Solid Waste Disposal Act at Ala. Code § 22-27-1 et seq., which authorizes counties to provide solid waste programs for its citizens, including the authority to require mandatory

participation in such programs.⁴ *See in particular Ala. Code § 22-27-3.*

8. Park and Recreation Boards

Ala. Code § 11-22-1 et seq. authorizes counties to create a public park and recreation board to acquire, enlarge, improve, expand, own, operate, lease and dispose of properties to promote public interest and participation in sports, athletics and recreational activities and to provide or improve public parks in this state, including all buildings, facilities and improvements. Such a corporation may issue bonds to carry out its program and pay the bonds from the receipts of its projects. *See e.g. Ala. Code §§ 11-22-9.*

Ala. Code, § 11-86-1 et seq. also provides for the creation of a recreation board to direct, supervise, and promote recreation programs “as will contribute to the general welfare of the residents of the county or municipality.” Pursuant to *Ala. Code § 11-86-5*, the county commission may make appropriations for the support and maintenance of the board, programs, and recreational lands, buildings, equipment, and facilities. The county commission may also designate county lands or buildings for use as parks, playgrounds, and recreation centers and may acquire lands and buildings for recreational purposes, including by the exercise of eminent domain. Under *Ala. Code § 11-86-5*, a county may join with other counties or municipalities in acquiring property for recreational purposes, operating and maintaining recreational facilities, and establishing and maintaining a joint recreation board.

Ala. Code § 11-18-20 et seq. authorizes the county commission to acquire by purchase, condemnation, donation, or otherwise land within the county in order to establish and maintain a public park or recreational area. This statute also provides for the acquisition of land in an adjoining county, and authorizes the appropriation of county funds for the establishment and maintenance of a park or recreational area on the land acquired for this activity.

⁴ For more information on county solid waste programs, see Chapter X.

9. Housing Authorities

Ala. Code §§ 24-1-60 et seq. authorizes the county commission to create a housing authority administered by a board of housing commissioners if, after a hearing on the question, it determines there is a need for a housing authority. The statute sets out procedures for establishing the authority and appointing a board of directors to oversee the program.

The function of the county housing authority is to provide safe, sanitary, and uncongested dwelling accommodations for low income citizens in the county. To this end, the authority is empowered to, among other things, investigate housing conditions and the means of improving such conditions; determine where unsafe or unsanitary housing conditions exist; make recommendations on the clearing and reconstruction of areas in which unsafe or unsanitary housing conditions exist; acquire by eminent domain any real or personal property necessary to carry out the authority's purposes; and acquire and operate low-cost housing projects.

If the governing bodies of two or more counties determine that there is need for a joint housing authority, they may form a regional authority. *See Ala. Code §§ 24-1-100 et seq.* Upon the creation of a regional housing authority, any county housing authority then in existence within the region is abolished.

10. Social Service Programs

Ala. Code § 38-8-1 provides that the county commission has the "jurisdiction, power, and authority necessary and proper for the relief and support of the poor of its county." This includes the power to acquire and hold property, as well as to employ people to provide services. Most services for the poor available in a county are provided by local non-profit organizations. The county commission generally provides some assistance to these organizations through appropriations and/or provision of facilities, equipment, etc. While *Ala. Const. § 94* generally prohibits providing public monies or property for purely private enterprises,

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assistance for programs offering social services to the general public falls under the “public purpose” exception to *Section 94*. Additionally, providing this support is authorized by *Ala. Code* § 38-8-1.⁵

C. OTHER ENTITIES AND ORGANIZATIONS SERVING COUNTY GOVERNMENT

1. Regional Planning and Development Commissions

Ala. Code § 11-85-1 *et seq.* provides for the creation and operation of regional planning and development commissions under procedures set out in the law. There are currently twelve regional planning and development commissions within the state that provide a variety of services to local governments and regional areas of the state.

Ala. Code § 11-85-23 set out the powers and duties of regional planning commissions, which are as follows:

1. To perform comprehensive advisory planning and research for the region.
2. To provide planning assistance to any municipality or county; to any group of adjacent communities having common or related urban planning or development problems; or to any other regional planning agency.
3. To apply for, accept, and utilize grants and assistance from the federal government or other public or private source.
4. To contract for such planning with the federal government or with private or public sources.

In addition to the general powers and authorities set out above, the regional planning commissions play a statutory role in the review

⁵ For more information on *Ala. Const.* § 94 and the public purpose doctrine, see Chapter VII.

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and development of county solid waste plans. *Ala. Code* § 22-27-46 required regional planning commissions to “prepare and adopt a regional needs assessment evaluating solid waste management needs in their respective regions” prior to the development of the first local solid waste plan required in 1991 pursuant to *Ala. Code* § 22-27-47. While it is not routinely done, *Ala. Code* § 22-27-46 also requires that this assessment be revised and submitted to the department and local governments in the region annually.

Regional planning commissions also play a role in the local approval process for any application for a new or modified landfill permit. *Ala. Code* § 22-27-48 requires that the regional planning commission provide a “statement of consistency” following the county’s review and approval of such application.

More information about available regional planning and development commission programs can be found from the website of the Alabama Association of Regional Councils: alarc.org.

2. The Association of County Commissions of Alabama

The Association of County Commissions of Alabama was formed in 1929 to serve as an educational, technical, legal, legislative, and public policy resource for Alabama's sixty-seven counties. Each county commission in the state is a member of the Association, which operates under the motto, “67 Counties, One Voice”.

Each year, the Association represents the interest of county government before the Alabama Legislature, seeking to ensure that Alabama laws are written in a manner that is the most favorable to county governments statewide. All 67 counties vote to establish the Alabama County Platform which sets out foundation principles and legislative strategic goals for county government, and the Association staff utilizes this Platform as its guide to advocate for the best interests of Alabama’s counties.

The Association offers daily legal and policy advice and assistance to county officials and staff through its office in Montgomery and outside legal counsel in cases that will have a dramatic impact on

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counties throughout the state. Additionally, Association staff regularly provides counties with important information and guidance on current issues, including conducting regular webinars to keep county officials and staff up to date.

The Association also offers many programs for the benefit of county government, such as a county joint bid program and a program allowing counties to offset state income tax refunds for collection of certain debts owed to counties. A leadership program known as PLAN (Practical Leadership Action Network) was initiated in 2014 for commissioners elected to a second term in office, with the inaugural class completing the program in August 2016.

To provide the best benefits to taxpayers and county employees, many of the counties participate in the Association's self-funded insurance programs. Workers' compensation insurance and liability insurance are provided through these efficient, county-run insurance programs. Beginning in 2016, the liability insurance fund also offers property insurance coverage.

Each year, the Association sponsors conventions, conferences, and workshops to keep commissioners and their staff informed on current issues and to provide an opportunity to share ideas and successes with colleagues throughout the state. The Association's annual convention is held each year in August, and its Legislative Conference, where the year's legislative agenda is determined, is usually held in December.

The Association administers several professional development and certification programs for county employees through the County Government Education Institute (CGEI). Additionally, the Association staff members regularly serve as trainers in education course offerings for county officials, attorneys, and staff. In 2015, the Association established the Alabama Jail Academy to provide a certification program for employees working inside Alabama's jails.

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As part of the mission to improve county government in Alabama, the Association works closely with and provides administrative support for the following five affiliate organizations comprised of county employees working in the major county program areas:

Association of County Administrators of Alabama
Association of County Engineers of Alabama
County Revenue Officers Association of Alabama
Alabama Association of Emergency Managers
Alabama Association of 9-1-1 Districts

These organizations have become a vital part of the Association's efforts on behalf of counties, and promote the highest standards of professionalism and performance. The organizations elect their own officers from within their ranks and hold annual conferences to remain informed on issues important to their job performance. Additionally, each organization has an educational program designed to train new personnel and keep seasoned employees up-to-date on the roles and responsibilities of county government.

The Association's magazine, *County Commission*, is published six times a year and provides county officials information on current issues important to the operation of county government. Additionally, the Association publishes a directory of county officials and other publications, such as Comparative Data on Alabama Counties and overviews of county road and bridge needs.

The activities of the Association are governed by its officers and board of directors. The officers -- president, president-elect, vice president, and minority director -- are elected each year by vote of the counties. The members of the Board of Directors are elected by vote of the counties within each of the twelve Association Districts. The elections are held during the business session at each annual convention in August.

There is also a Legislative Committee responsible for overseeing the development of the Alabama County Platform and assisting with advocacy efforts during each legislative session. All past

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presidents of the Association serve on the Legislative Committee, with the immediate past president serving as chair. Additionally, the Association membership elects district representatives to serve on this committee during the business session at the annual convention.

3. Alabama Local Government Training Institute

The Alabama Local Government Training Act requires “newly elected county commissioners to participate in a course of training and education on matters pertaining to the administration and operation of county government” instructing them about their powers, duties, and responsibilities as county commissioners. *Ala. Code § 11-3-41*. The law also created the Alabama Local Government Training Institute (ALGTI) to design, implement, and administer the training and education program for county commissioners under the direction and supervision of its board of directors. *Ala. Code § 11-3-44*.

The training program established to comply with this statute is administered by Auburn University’s Government and Economic Development Institute and offers mandatory and elective courses for newly-elected (and veteran) commissioners on issues such as personnel management, budgeting, road and bridge management, ethics, planning, and media relations. The Association of County Commissions of Alabama assists the Institute in curriculum development and training. County commissioners have two years from the date their terms begin to complete fifty hours of required training. *Ala. Code §§ 11-3-43(a) and 11-3-44(c)*. The ALGTI program also offers a second level of advanced training for those commissioners who want to continue their education.

The Board of Directors of the Alabama Local Government Training Institute is required to provide an annual report to the Alabama Legislature outlining which commissioners have completed or failed to complete the statutorily-mandated training. *Ala Code § 11-3-46*. This report is due annually on or before the fifth legislative day of the regular session of the Legislature.

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The ALGTI Board of Directors also provides oversight for the County Government Education Institute (CGEI), which offers educational and certification programs for county employees. This program, which is managed and administered by the Association of County Commissions of Alabama, offers two-day training programs that provide essential county employees with the skills needed to succeed in today's ever-changing environment. Employees completing the certification programs are awarded certificates during the Annual Convention of the Association of County Commissions of Alabama.

APPENDIX

CODE OF ETHICAL CONDUCT FOR ALABAMA COUNTY COMMISSIONERS

Preamble

The stability of democracy depends upon the continuing consent of the governed. This, in turn, depends upon the trust that the populace holds for its government. County commissioners must be ever aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents.

The fundamental ethical principles, as developed in this Code should be considered as a guide and not a substitute for the law or a county commissioner's best judgment. Ultimately, each county commissioner must find within his own conscience, the touchstone on which to base his conduct.

Canon 1

A County Commissioner Should Uphold the Integrity and Independence of His Office

A county commissioner should demonstrate the highest standards of personal integrity, truthfulness, honesty, and fortitude in all his public activities in order to inspire public confidence and trust in county government. A county commissioner should participate in establishing, maintaining, enforcing and should himself observe, high standards of conduct so that the integrity and independence of his office may be preserved. The provisions of this Code should be construed and applied to further these objectives.

Canon 2

A County Commissioner Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

- A. A county commissioner should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of his office.
- B. A county commissioner should not allow his family, social, or other relationships to influence his conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that *they are in a special position to influence him.*

Canon 3

A County Commissioner Should Perform the Duties of His Office Impartially and Diligently

A county commissioner should, while in the performance of the duties of his office as prescribed by law, give precedence to such duties over all his other activities. In the performance of those duties, the following standards should apply:

- A. Deliberate and Adjudicative Responsibilities
 - (1) A county commissioner should be faithful to the general and local laws pertaining to his office and strive for professional competence in them. He should be unswayed by partisan interests, public clamor, or fear of criticism.

Appendix

- (2) A county commissioner should demand and contribute to the maintenance of order and decorum in proceedings before the county commission.
- (3) A county commissioner should be honest, patient, dignified, and courteous to those with whom he deals with in his official capacity, and should require similar conduct of his staff and others subject to his direction and control.
- (4) A county commissioner should accord to every person, who is legally interested in a proceeding before the commission, full right to be heard according to law.
- (5) A county commissioner should dispose promptly of the business of the county for which he is responsible.

B. Administrative Responsibilities

- (1) A county commissioner should diligently discharge his administrative responsibilities, maintain professional competence in the administration of his duties, and facilitate the diligent discharge of the administrative responsibilities of his fellow commissioners and other county officials.
- (2) A county commissioner should conserve the resources of the county in his charge. He should employ county equipment, property, funds and personnel only in legally permissible pursuits and in a manner that exemplifies excellent stewardship.

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- (3) A county commissioner should require his staff and county employees subject to his direction and control to observe the standards of fidelity and diligence that apply to him.
- (4) A commissioner should take or initiate appropriate disciplinary measures against a county employee for improper conduct of which the commissioner may become aware.
- (5) A county commissioner should not employ or recommend the appointment of unnecessary employees. He should exercise his power of employment only on the basis of merit, avoid favoritism and refrain from illegal discrimination and nepotism. He should not recommend or approve compensation of employees beyond the fair value of services rendered.

C. Abstention from voting

- (1) A county commissioner should abstain from voting on any matter coming before the commission when his impartiality might reasonably be questioned.
- (2) To this end, a county commissioner should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

Canon 4

A County Commissioner Should Regulate His Extra-Governmental Activities to Minimize the Risk of Conflict with His Official Duties

A. Financial Activities

- (1) A county commissioner should inform himself concerning the ethics laws of this state and particularly those relating to proscribed gifts and loans and should scrupulously comply with the provisions of such laws.
- (2) A county commissioner should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his official duties, or exploit his county position.
- (3) A county commissioner should manage his personal financial interests to minimize the number of cases in which he must abstain from voting on matters coming before the commission.
- (4) Information acquired by a county commissioner in his official capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his official duties.

Canon 5

A County Commissioner Should Refrain From Political Activity Inappropriate to His Office

- A. A candidate for the office of county commissioner, including an incumbent:
 - (1) Should inform himself concerning the laws of this state with regard to campaigns and relevant disclosure requirement and should scrupulously comply with the provisions of such laws;
 - (2) Should maintain the dignity appropriate to the office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him:
 - (3) Should not make pledges or promises of conduct in office that he will not or cannot perform or would be illegal if it were performed;
 - (4) Should not misrepresent his identity, qualifications, present position, or other fact; and
 - (5) Should avoid pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office.
- B. A candidate for the office of county commissioner, including an incumbent, that is filled by public election between competing candidates, should not permit the use of campaign contributions for the private benefit of himself or members of his family.

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