THE ALABAMA MUNICIPAL
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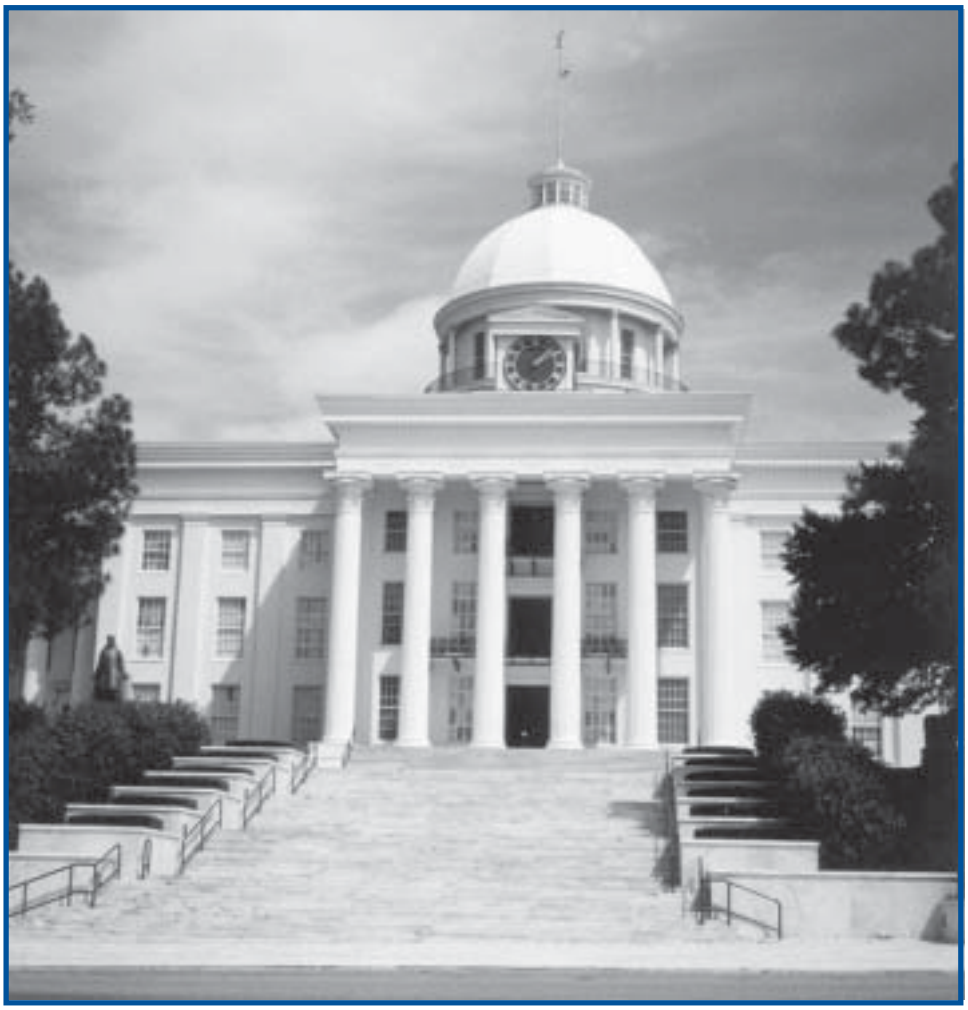
Understanding the Alabama Legislature



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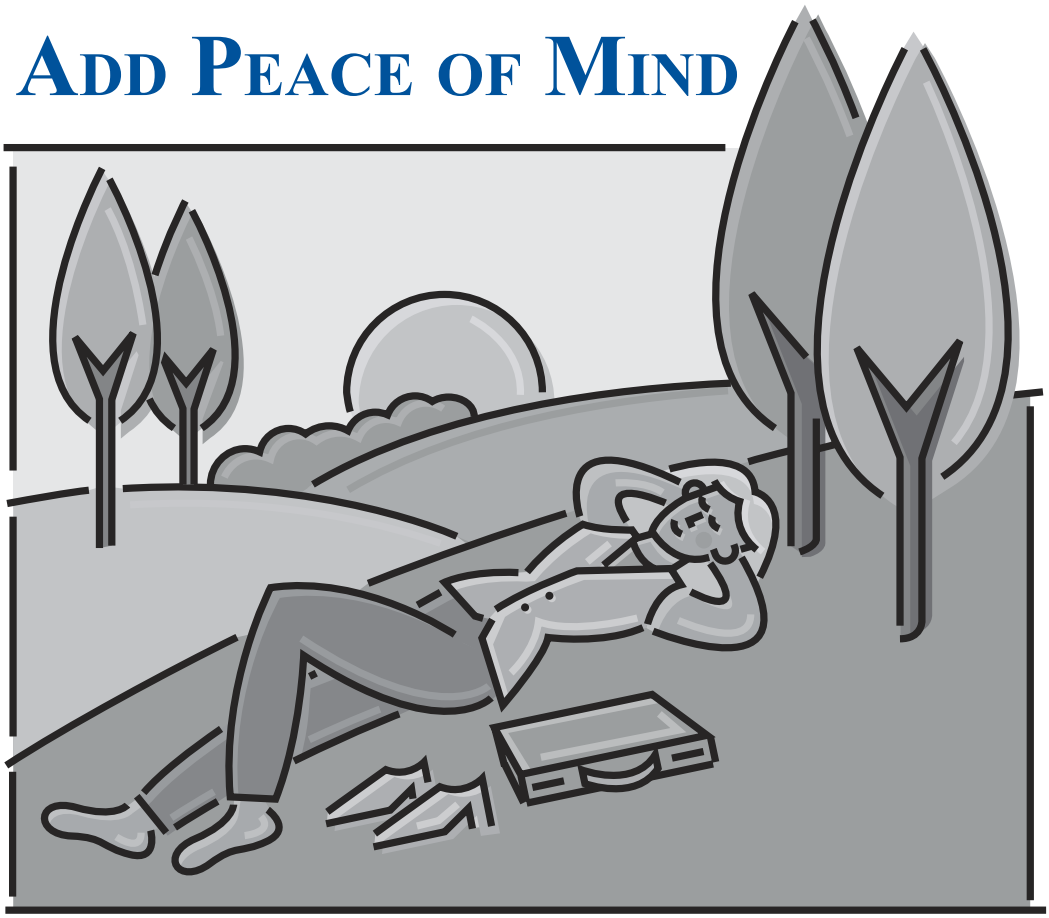

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2003 Annual Directory & Vendor Yellow Pages Available

The *Annual Directory & Vendor Yellow Pages* is a 132 page, 8˚ x 11 publication with a coil binding that also offers information about the League and our staff and provides contact information for the Alabama House of Representatives, the Alabama Senate, Constitutional officers and important state agencies. Municipal listings for Alabama's more than 400 incorporated cities and towns include the following information:

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The President's Report

George W. Roy
Mayor of Calera

Attend the 2003 Congressional City Conference and Be Heard

A redesigned Congressional City Conference will offer delegates a unique opportunity to make a difference in Washington now that the new Congress has convened.

The annual legislative conference – which will be held in Washington March 7-11, 2003, – will be built around the top advocacy priorities for America's cities and towns and include a major "city lobby day" event on Capitol Hill on Tuesday, March 11.

"The Congressional City Conference should be one of our most powerful lobbying tools," NLC First Vice President John DeStefano, Jr., said. "Therefore, I urge city officials to plan now to be in Washington in March to learn about the priorities and participate in city lobby day on Tuesday morning, March 11." DeStefano became NLC's newest president during the Annual Business Meeting on December 7 during the Congress of Cities and will preside over the March conference.

The Congressional City Conference program will offer general sessions and workshops on Sunday, March 9, and Monday, March 10, focusing on the local priorities for federal action and featuring Congressional leaders, cabinet members and other high level representatives of the Bush Administration. President Bush will be invited to address the delegates.

The conference will also include a special closing general session on Monday afternoon, March 10, featuring a high profile political leader as a keynote speaker followed by action planning for city lobby day on Tuesday morning. The traditional opening reception and Capitol Steps performance have been shifted from Sunday to Monday night, March 10, to maximize delegate participation on Tuesday.

Leadership Training Institute seminars will be held on Friday and Saturday, March 7 and 8. All policy committees, the NLC Board of Directors and NLC Advisory Council will meet on Saturday, March 8.

The NLC Officers are already shaping the top advocacy and lobbying priorities for the year and will be seeking input from the delegates during the Congress of Cities. Heading the list will be federal funding to support hometown security efforts, which will be a major theme of the Congress of Cities.

The Homeland Security Act of 2002, which Congress enacted and President Bush signed in 2002, failed to provide any funds to support local first-responder efforts. "I ask all mayors and municipal officials to urge their senators and congressmen to make that long-overdue funding a top priority," said DeStefano

Other priorities for the coming year most likely will focus on ensuring federal support for fundamental housing, community development, public safety, and transportation programs and continuing efforts to protect local revenue authority.

"With a new Congress set to convene in January with a Republican majority in both the House and Senate, it is essential that we come together in Washington in large numbers to talk about what matters to America's cities and towns," DeStefano said.

This article was written by Christine Becker of the National League of Cities.

Mark Your Calendars:

Convention 2003 will be held April 26-29 in Huntsville!

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Municipal Overview

By
PERRY C. ROQUEMORE, JR.
Executive Director

Understanding the Alabama Legislature

One of the prime functions of the League of Municipalities is to represent the interests of municipal government at the legislative level by informing members of legislation introduced that might affect municipal government and by presenting bills to the legislature on behalf of the municipalities of this state.

It is important for municipal officials to have a good basic understanding of the legislative process in Alabama. This article briefly explains the workings of the Alabama Legislature and how legislation is passed by that body.

Constitutional Provisions

Article IV of the Alabama Constitution of 1901 (Sections 44 through 111) establishes the legislative department of state government. Section 44 states that the legislative power of the state shall be vested in a legislature composed of a Senate and a House of Representatives. Section 44 has been construed by the Alabama Supreme Court to give plenary power to the state legislature. State v. Lane, 181 Ala. 646, 62 So. 31.

According to the Court, the Alabama Legislature possesses all of the legislative power which resides in the state under the United States Constitution, except as that power is expressly or impliedly limited by the Alabama Constitution. This differs from the powers granted to the United States Congress in that Congress can exercise only those powers enumerated in the Constitution of the United States or implied therefrom.

Article IV prescribes the manner of drafting bills, the organization and qualifications of members of both houses, authorizes each house to determine the rules of its proceedings and establishes procedures for the enactment of laws. Due to space limitations, only the provisions most applicable to the interests of municipalities will be discussed in this article.

Composition of the House and the Senate

The state legislature consists of 35 Senators and 105 members of the House of Representatives. This number was established by order of a three-judge federal district court for the Middle District of Alabama, Northern Division, in the case of Sims v. Amos, 336 F. Supp. 924, aff'd, 409 U.S. 942 (1972). In the decree, the court divided the state into 105 House districts and 35 Senatorial districts. Each House district is entitled to one Representative and each Senate district is entitled to one Senator. Each district has approximately the same number of people as any other district.

Qualifications of Legislators

Section 47 of the Alabama Constitution of 1901 states that Senators must be at least 25 years of age at the time of their election and Representatives must be at least 21 years of age at the time of their election. Both Senators and Representatives must also have been citizens and residents of Alabama for three years and must have lived in their respective districts for at least one year immediately preceding their election.

Section 60 of the Alabama Constitution states that no person convicted of embezzlement of public money, bribery, perjury or other infamous crimes is eligible for membership in the state legislature.

Each house has the authority, given by the Alabama Constitution, to punish its members. With the concurrence of two-thirds of either house, a member may be expelled. A member who has been expelled for corruption is not thereafter eligible for membership in either house. Sections 53 and 54, Alabama Constitution of 1901.

Election and Terms of Members

Members of the House and the Senate are elected, for four-year terms, on the first Tuesday after the first Monday in November in the even years which are not leap years. Their terms begin on the day following their election. Their terms expire on the day after the election of their successors four years later. Section 46, Alabama Constitution of 1901. Amendment 57 to the Alabama Constitution provides that each house shall judge the qualifications of its members.

Organizational Session

The state legislature meets in Organizational Session on the second Tuesday in January following the election of members. The only business that may be transacted at such

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a session is the organization of the legislature for the ensuing four years, the election of House and Senate officers, the appointment of standing and interim committees, the canvassing of election returns and the determination of contested elections.

During the Organizational Session, the House membership elects a Speaker who has the duty of presiding over the House of Representatives. The House membership also elects a Speaker Pro Tem to preside over the House in the absence of the Speaker.

The Senate is presided over by the Lieutenant Governor. During the Organizational Session, the Senate chooses a President Pro Tempore to preside in the absence of the Lieutenant Governor.

Pursuant to Section 53 of the Alabama Constitution, the House and the Senate adopt rules of procedure for the next four years.

Legislative Committees

The standing committees of each house are established by the rules of each house. These committees, which are required by the Alabama Constitution, operate throughout the session for the consideration of legislation assigned to them.

Committee members are named at the Organizational Session and hold membership throughout their terms. The members of House standing committees are appointed by the Speaker of the House. A rules change approved by the Senate this year provides that the members of Senate standing committees are appointed by the Senate President Pro Tem.

Length of Sessions

Amendment 339 to the Alabama Constitution requires the state legislature to meet in annual regular sessions. Each regular session is limited to 30 legislative days within 105 calendar days. Each special session called by the Governor is limited to 12 legislative days within 30 calendar days.

A legislative day is a day on which either house of the legislature is actually in session. Normally, the legislature will meet in session two days per week and schedule committee work on the other days.

Types of Bills

Amendment 397 to the Alabama Constitution states that a general law is a law which in its terms and effect applies either to the whole state or to one or more municipalities of the state less than the whole in a class.

A special or private law is one which applies to an individual, association or corporation.

A local law is a law which is not a general law or a special or private law.

Section 11-40-12, Code of Alabama, 1975, establishes eight classes of municipalities based on population. The legislature has the authority to pass measures which affect only those municipalities within a specified class or classes. Such classification legislation is defined as general law by Amendment 397 to the Alabama Constitution. Any such legislation which has application to only one municipality must be advertised prior to introduction according to the provisions of Section 106 of the Alabama Constitution.

Section 106, as amended by Amendment 341, states that notice of all local bills must be published, prior to introduction, at least once a week for four consecutive weeks in some newspaper published in the county. If no newspaper is published in the county, then the notice must be posted, prior to introduction, for two consecutive weeks at five different places in the county.

Steps in Passing Legislation

If a member of the legislature decides that a proposal has merit and that legislation should be enacted, the legislator prepares a bill or has a bill prepared for introduction into the house of which he or she is a member. That legislator then becomes the sponsor of the bill.

Many bills are introduced in both houses of the legislature on or about the same date. This practice is not prohibited except the Constitution, in Section 70, requires that all bills to raise revenues shall originate in the House of Representatives. There is no limitation upon the number of sponsors that may sign a particular bill.

After introduction, the bill is assigned a consecutive number, for convenience and reference, and is read by title only.

This action is known as the first reading of the bill. The Speaker of the House of Representatives or the President Pro Tempore of the Senate, depending on the body where the bill was introduced, refers the bill to a standing committee of the House or the Senate.

Section 62 of the Alabama Constitution states that no bill shall become a law until it has been referred to a standing committee of each house, acted upon by such committee in session, and returned therefrom.

Standing committees are charged with the important responsibility of examining bills and recommending action to the full House or Senate. At some time when the House or Senate is not in session, the committees of each house will meet and consider the bills which have been referred to them

and decide whether or not particular bills should be reported to the full membership. It is during these committee sessions that members of the general public are given an opportunity to speak for or against the measures being considered by the standing committees.

Bills which are favorably acted upon by the standing committees are reported to the entire house for consideration and are placed on the regular calendar. Bills reported unfavorably are placed on the adverse calendar. If a committee fails to act, the membership of each house, by a vote, may require the committee to act and report its action to the body at its next meeting.

The committee reports a bill to the full house when the reports of the committees are called. The bill is given its second reading at that time and is placed on the calendar. The second reading is by title only.

Section 63 of the Alabama Constitution of 1901 requires that every bill be read on three different days in each house and that each bill be read at length on final passage.

Bills are listed on the calendar by number, sponsor and title in the order in which they are reported from committee. Bills are considered for a third reading (passage) in the order of the calendar unless action is taken to consider a bill out of regular order.

Important bills can be brought to the top of the order by special order or by a suspension of the rules. Special orders are recommended by the Rules Committee and must be adopted by a majority vote. In the final days of a session, both houses usually operate daily on special orders.

When a bill comes up for consideration, the entire membership of the house considers its passage. The bill is read at length, studied and debated. In general, regular parliamentary rules of procedure apply when a bill is being debated on final passage. Each house has special rules which limit debate.

A majority vote in each house is necessary for passage of legislation except in cases where the Constitution requires more than a simple majority. For example, a proposed Constitutional Amendment must receive the vote of three-fifths of all members elected. Section 284, Alabama Constitution of 1901. In a special session, any legislation not covered in the Governor's call, or proclamation, must receive a two-thirds vote in each house. Section 76, Alabama Constitution of 1901.

After a bill has been voted on, any member who voted with the prevailing side may move to reconsider the question, but the time within which bills may be reconsidered is limited in both houses.

Bills passed in one house are sent to the other house by a formal message and the bills then receive their first reading in the second house. Proposals go through the same procedure in the second house committee study and report, second and third readings and floor debate and votes.

If the second house passes the bill without amendment, it goes back to the originating house for enrollment. If a bill is amended in the second house, it must be returned to the first house for consideration of the amendment. The first house may vote to concur or not to concur, in which case the bill dies. The first house may vote not to concur and request a conference committee to work out the differences between the two bills. If the other house agrees to a conference, the presiding officers of each house appoint members to the conference committee.

The conference committee meets and tries to reconcile the differences in the two versions of the bill. If agreement is reached and both houses adopt the conference committee report, the bill is finally passed.

Sometimes a house may refuse to adopt the report of the conference committee and ask for a further conference. If the committee is still unable to reach an agreement, it may ask to be discharged and request the appointment of another conference committee to begin the process again. If the conferees never agree, the bill is lost.

When a bill is passed in both houses in identical form, it is enrolled or copied in its final form and sent to the house of origin for signature by the presiding officer in the presence of the members. The measure is then sent to the second house where it is also signed by the presiding officer in the presence of the members. Then the bill is sent to the Governor. The Governor is not required to sign proposed Constitutional amendments, they are sent directly to the Secretary of State for submission to voters for ratification at the time prescribed in the legislation.

Action by the Governor

When a bill reaches the Governor, he may sign it and thus complete the enactment of a bill into law. However, if the Governor objects to the bill, he may veto it or suggest amendments to the bill and return it to the house of origin. The bill is then reconsidered, first by the originating house and, if passed, by the second house. If a majority of the members elected to each house agree to the proposed amendments, the bill is returned to the Governor for his signature.

If both houses cannot agree to the Governor's amendments or if the Governor proposes no amendments but returns the measure, the bill has, in effect, been vetoed. The houses then may try to override the Governor's veto. An affirmative vote of 18 Senators and 53 Representatives is

continued next page

required to override the Governor's veto.

If the Governor fails to return a bill to the house of origin within six days after it is presented to him, Sundays excepted, the bill becomes law without the Governor's signature, unless the return was prevented by recess or adjournment. In such a case, the bill must be returned within two days after the legislature reassembles or the bill becomes law without the Governor's signature.

Bills which reach the Governor less than five days before the end of the session may be approved by him within 10 days after adjournment. Bills not approved within that time do not become law. This is known as the pocket veto.

The Governor has the authority to approve or disapprove any item or items of an appropriation bill without vetoing the entire bill.

Budget Isolation Resolutions

Amendment 448 to the Alabama Constitution states that the Governor must submit a proposed budget to the legislature by the second day of each regular session. The legislature must make the basic appropriations necessary for the current budgetary period before passing any other legislation. However, if three-fifths of a quorum adopt a resolution declaring that this restriction does not apply to a certain bill, that bill may proceed to final passage. This is known as the budget isolation resolution and permits the legislature to enact legislation prior to adopting a budget.

Unfunded Mandates

The Alabama Constitution provides that any general law whose purpose or effect is to require a new or increased expenditure of funds held or disbursed by the governing body of a municipality or county, or instrumentality thereof, shall not take effect unless (1) it is approved by the affected governing bodies or (2) the legislature provides funding to pay for the mandate or (3) the legislature passes the legislation by the affirmative vote of two-thirds of those voting in each house.

The amendment does not apply to: (1) local laws; (2) acts requiring expenditures of school bonds; (3) acts defining new crimes or amending definitions of crimes; (4) acts adopted prior to the ratification of the amendment; (5) acts adopted to comply with federal mandates, only to the extent of the federal mandate; (6) acts determined by the Legislative Fiscal Office to have an aggregate insignificant fiscal impact on affected governments; or (8) acts of general application prescribing the minimum compensation for public officials.

The term "aggregate insignificant fiscal impact" shall mean any impact less than $50,000 annually on all affect governments statewide. ■

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During the Session

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ENVIRONMENTAL OUTLOOK

By Gregory D. Cochran
Director, State and Federal Relations

Air Quality Lawsuit by Northeastern States

Nine Northeastern states – Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont – filed a lawsuit with the U.S. Court of Appeals in Washington against the Environmental Protection Agency in December over its decision to relax clean-air rules to help coal-fired power plants and other industrial facilities avoid costly pollution controls.

Existing rules require U.S. utilities and refineries to invest in state-of-the-art pollution controls if a plant undergoes a major expansion or modification. In November, the Environmental Protection Agency proposed rules to change the definition of "routine maintenance," to give utilities more leeway to modify plants without triggering extra pollution-reduction requirements.

The suit charges the changes amount to gutting key elements of the federal clean air law by allowing companies to pollute more without having to install new emission controls. The states argue this will hinder them from reducing air pollution and jeopardizes public health. The EPA has defended its new rules as simply giving power plants and oil refineries more flexibility to cut emissions. EPA believes the finalized batch of rules have clear environmental benefits. Other regulations issued as proposed rules – including the controversial routine maintenance modifications – will be open for public comment and possible revision. But the rules were roundly criticized in November by Democratic lawmakers and environmentalists.

Who is affected: Older industrial plants, factories, oil refineries, pharmaceutical manufacturers, pulp and paper mills, automobile plants, power plants and other major manufacturing facilities that were exempted from some requirements of the 1970 Clean Air Act on the condition that they do not make substantial changes that cause increased pollution.

The issue is pivotal for aging coal-fired utilities in the Midwest that could face hundreds of millions of dollars in new investments. Emissions from those plants drift over Northeast states because of wind patterns. The Electric Reliability Coordinating Council, a utility lobbying group, called the new rules "a step in the right direction." The National Association of Manufacturers said the new rules will bring cleaner air and boost energy supplies.

Major Changes to Key Elements of Clean Air Rules issued by the EPA.

• Companies are given greater flexibility to modernize or expand without having to install new pollution controls, although the changes may lead to greater air emissions.

• Plants that have installed state-of-the-art pollution controls are assured they will be exempt from having to install more effective equipment even if they expand or change operations.

• Plants with numerous pollution sources may increase pollution from some sources as long as overall, plant-wide air emissions are not increased.

• Companies are given greater leeway in calculating pollution to reduce the likelihood that new pollution controls will be required.

Activist says state needs long-range environmental plan

The state environmental agency needs a long-term master plan for protecting the state's natural resources, an environmental activist said. Pat Byington, a member of the state Environmental Management Commission, has placed

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the issue on the commission's agenda for its next meeting on Feb. 25th. The commission sets policy for the state Department of Environmental Management.

Byington is the former director of the Alabama Environmental Council, an environmental watchdog group. He feels the proposed master plan should state environmental goals and initiatives and should require annual reviews of ADEM's director. It's the job of the commissioners to develop environmental policy for the state and that also means developing an environmental master plan for ADEM. Byington believes having stated goals and objectives could increase the chances for more state funding.

The state environmental agency has long been criticized as being too lax in enforcement of pollution laws and too friendly to industry when granting permits. ADEM officials say they are limited by the authority granted by the Legislature and by lack of money.

Byington wants ADEM to develop more partnerships similar to its work with TVA's water and fish tissue monitoring program. He suggested ADEM might work with counties and cities on intra-agency recycling programs and training workers in other pro-environmental efforts.

Jefferson county reduced water consumption by 1.8 million gallons last year in county offices simply by installing remote sensor faucets and toilets. Energy consumption was cut 700,000 kilowatt hours by using energy-efficient lights and cutting off unused devices. The county's print shop switched to a soy-based ink that is lower in toxins.

Govenor Bob Riley seems receptive to Byington's ideas. Riley said he hopes to resolve the so-called "water wars" dispute over rivers that Alabama shares with surrounding states. Riley said he's already had discussions with the next Georgia governor about setting tougher water quality standards for common rivers.

Negotiators extend tri-state water talks

Negotiators for Georgia, Alabama and Florida have decided to extend tri-state water talks for the 13th time, allowing another six months to try to work out an agreement on sharing water from two river systems. The current period expired Jan. 31 for both the Apalachicola-Chattahoochee-Flint River System that provides water to all three states and the Alabama-Coosa-Tallapoosa River System serving Georgia and Alabama.

Governor Perdue has called for a summit of the three governors to try to iron out the differences in the ACF waterway. For the first time since the negotiations began, all three states will have Republican governors. Georgia's newly elected Sonny Perdue and Alabama's Bob Riley join Florida's Jeb Bush.

A big question is how to supply water needs of the growing metro Atlanta area without affecting users downstream on the Chattahoochee River. The new deadline is July 3, 2003. If the negotiating deadline passes without an extension, the final arbiter could be the United States Supreme Court. ■

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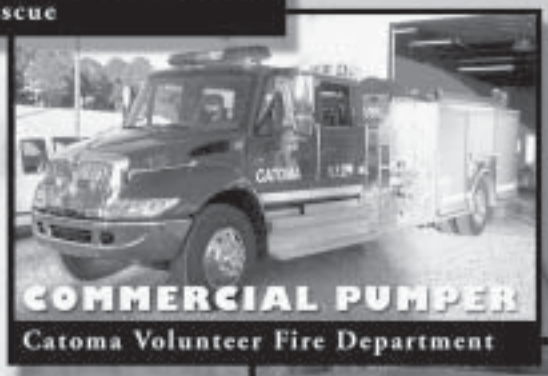

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THE LEGAL VIEWPOINT

By Ken Smith
Deputy Director/Chief Counsel

Military Leave for Municipal Employees

Alabamians have traditionally supported a strong military and backed this support with a willingness to serve. In terms of total numbers, Alabama has one of the largest National Guards in the United States.

Many Guardsmen and Reservists are also municipal employees and officials. Events of recent years, such as the military action in Afghanistan and other build-ups since September 11, 2001; Desert Storm; and the deployment of troops in areas like Bosnia and Haiti have made questions surrounding the military service of municipal employees and officials significant for many affected municipalities.

Of course, these individuals already serve the public, often in positions which cannot remain vacant. When they take time off to serve in the armed forces, losing them – even on a temporary basis – creates hardships for the municipality. Often, the municipality has to hire replacements. In some cases – police officers, for instance – finding an employee with the required training may prove impossible. And how does a municipality handle extended absences of elected or appointed officials?

What is the municipality's responsibility to employees who chose to join the Guard, or even enter the military full-time? Upon their return, how should employees in the Guard or Reserve be treated? What obligation does the municipality owe the replacement?

This article examines state and federal laws regarding military leave to which municipal employees and officials are entitled.

Temporary Acting Officials

Sections 36-81 to 36-8-6, Code of Alabama, 1975, govern the temporary replacement of elected or appointed officials who are on active duty status. Pursuant to these sections, an official who is serving in the military at any time during an existing state of war or when a national emergency has been declared by the President does not vacate his or her office. It doesn't matter whether the official volunteers for service or is called involuntarily.

Section 36-8-2 gives the person with the power to fill vacancies in the office the authority to temporarily appoint an acting official to serve while the regular official is gone. The regular official must notify the appointing authority in writing that he or she will enter military service and wishes to have an acting official appointed. If there is no written notice, the authority may temporarily fill the vacancy itself.[1]

The official who is temporarily vacating the position may recommend a successor to the appointing authority. The temporarily official has all the power, duty and authority of the regular official. If the temporary replacement official enters into active duty, the appointing authority may fill the vacancy temporarily once they are notified in writing. If the temporary official does not notify them within 30 days of entering service, the appointing authority may fill the office with another temporary official.

The temporary acting official serves during the absence of the regular official and until 30 days from the date the regular official provides written notice that he or she intends to return to office.

Employees and Officers Granted 168 Hours Paid Leave to Serve

Section 31-2-13, Code of Alabama, 1975, provides that all municipal employees and officers who are active members of the National Guard or any Reserve unit of the military are entitled to 168 hours of paid leave of absence in order to attend training sessions. Absences cannot be deducted from the employee's vacation or sick leave time, nor can they affect the employee's efficiency rating. Public entities cannot refuse an employee the right to join the Reserve or Guard or interfere in his or her membership in the Reserves or Guard. 2002-090.

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In short, Section 31-2-13 guarantees employees and officers 168 hours in order to serve in Reserve branches of the military or the Guard without the leave counting against them. Job performance ratings, seniority or any other job benefits may not be reduced due to the absence of the employee.

For purposes of this provision, it doesn't matter that the employee voluntarily joined or reenlisted in the Reserve or Guard. Attorney General's Opinion to Hon. W. H. Bendall, April 2, 1981. The legislative intent behind Section 31-2-13 was to encourage employees of public agencies to join military units. *Britton v. Jackson*, 414 So. 2d 966 (Ala. Civ. App. 1981).

A municipality may not pass an ordinance providing that an employee on military leave will receive the difference between the employee's salary and military base pay. Employees and officers are entitled to receive pay for both their military service and their jobs as municipal employees. Opinion No. 96-00188.

Section Does Not Apply to Private Employers

In *White v. Associated Industries of Alabama, Inc*., 373 So. 2d 616 (Ala. 1979), the Alabama Supreme Court held that Section 31-2-13 violated the due process clause of the Alabama Constitution when applied to employees of private companies. The Court stated that requiring employers to bear the cost burden of permitting employees to join the Guard or Reserve, a voluntary decision by the employee, "where no reasonable relation exists between absence from work for Guard or Reserve service and the legitimate end of ensuring adequate protection for Alabama residents by promoting participation in the Guard or Reserve is clearly constitutionally impermissible."

The Court also found that Section 31-2-13 violated the impairment of contracts clause of the Alabama Constitution. Court noted that employers offer different incentives and options for employees interested in part-time military service and that these incentives were important parts of the contracts between the employees and employer. The Court held that the means – requiring employers to pay employees for up to 168 hours (at the time of the Court's decision, 21 days) of absence – was not reasonably related to the end of providing adequate military enrollment.

However, this opinion dealt solely with employees of private businesses. In an opinion to Hon. Guy F. Gunter, III, September 10, 1979, the Attorney General ruled that the Court did not hold that this section was unconstitutional when applied to public employees. Thus, employees of public entities, which includes municipalities and agencies created pursuant to legislative authority, are entitled to 168 hours of paid leave to attend military camp.

Cases Construing Section 31-2-13

In *Britton v. Jackson*, cited earlier, an employee of the Alabama Board of Corrections was denied military leave for weekend training sessions. The Court of Civil Appeals held that the statute specifically provides 21 days (now 168 hours) for "field or coast defense or other training," which could include weekend drills. The Court pointed out that members of the Guard and Reserve are required to participate in weekend drills and to hold that such drills were not intended to be included was at odds with the purpose behind the statute.

The Court also addressed the argument that permitting weekend employees time off for weekend drills penalized employees who did not work weekends, but who had to attend these drills. The Court found no prejudice against these employees, since they were entitled to 21 days (now 168 hours) during their regular work hours if they wished.

In another case, *City of Birmingham v. Hendrix*, 257 Ala. 300, 58 So. 2d 626 (1952), the issue was whether two employees of the City of Birmingham were entitled to credit for annual vacation and sick leave accumulated while on absence for extended duty as members of the United States Naval Reserve. The employees claimed they were due one day of leave for each month they were on active duty.

The Court disagreed, stating that Birmingham's personnel policy clearly indicated that no vacation or sick leave was to accumulate while an employee was on military leave. The Court found nothing in Section 31-2-13 to contradict this, stating that this section requires only that the employee be allowed military leave "without loss" of vacation or sick leave. To the Court, this meant that the employee could not be forced to use sick leave or vacation time for military leave. The Court applied Birmingham's policy on accumulation of sick leave and vacation time.

The Court also noted that Section 31-2-13 constitutes the minimum to which an employee is due. In other words, a municipality could grant additional benefits to encourage its employees to participate in the Guard or Reserve, if it chose to do so.

State Active Service Duty

In addition to leave for military training purposes, Section 31-2-13 grants employees another 168 hours "at any one time while called by the governor to duty in the active service of the state."

This phrase was added when, in 1973, the State Legislature adopted Act No. 73-1038, creating a uniform military code. In Opinion No. 90-00398, the Attorney General ruled that this part of Section 31-2-13 does not apply until individuals are called into the service of the state. Any officer or employee of a municipality or its agencies who is a member of a Guard or Reserve unit is entitled to such pay

and benefits that would otherwise accrue as a result of his or her regular employment during any absence for active military duty up to 168 working hours per calendar year. Opinion No. 88-00343.

In interpreting Section 31-2-13, the Attorney General stated in Opinion No. 2002-90, that a qualifying individual is entitled to 168 hours of leave with pay while in federal status per calendar year ***and an additional*** 168 hours of leave with pay while in the active service of the state by the Governor. The Opinion goes on to hold that a member who has used only a portion of his or her federal status hours of leave with pay may use the remainder of federal leave status with pay when called into federal service in the War on Terrorism. If there is a question as to how an employee or official or employee was called to active duty, the League recommends checking with his or her commanding officer.

Citing Opinion 91-00140 (where the Attorney General ruled that Troy State University could not pay the difference in an employee's military pay and his normal pay provided by the University), the Attorney General went on to hold that because Section 31-2-13 provides a cap on military leave with pay of 168 hours per calendar year, public entities may not pay for additional military leave with pay above 168 hours per calendar year.

The Attorney General, though, did determine that Section 31-2-13 does not cap other benefits that a municipality may provide to those who are on active military duty. For instance, in Opinion 91-00140, the Attorney General held that Troy State could continue to pay its share of an employee's insurance benefits while the employee was on active duty, and to allow the employee to remain eligible for all insurance benefits to which they would normally be entitled.

Other State Benefits

In 2002, the Legislature passed Act No. 2002-430, now codified as Chapter 12, Title 31, of the Code of Alabama, 1975. Act No. 2002-430 provides additional benefits for employees of the State of Alabama. While these benefits are generally mandatory for State employees, adoption of these benefits are optional for municipal and county governments.

Section 31-12-6 of the Code allows any municipality – at the option of the municipal governing body – to provide any employee who is called into active duty during the War on Terrorism which began in September, 2001, to receive the difference between active duty military pay and the higher public employment salary he or she would have received if not called into active duty. If a municipality elects to become subject to this provision, the Attorney General has held that military pay under this provision means basic pay as set forth in Chapter 3 of Title 37 of the United States Code and does not, therefore, include the special and incentive pays set forth in Chapter 5 nor the allowances set forth in Chapter 7 of Title 37 of the United States Code. Opinion No. 2002-270.

Sections 31-12-7 and 31-12-8 provide additional benefits for public employees. Again, in the League's opinion, these provisions are optional for municipalities. Section 31-12-7 allows employees to continue their insurance coverage (individual and dependent) and have the premiums deducted from their salary. As required by this Code Section, an employee must be receiving compensation from the employing entity to be eligible for these benefits. Thus, the only way a municipal employee would be receiving pay under this Section is if the municipality has adopted to continue paying a salary pursuant to Section 31-12-6 of the Code.[2]

Section 31-12-8 allows the reinstatement of any leave an employee used as a result of being called into active duty. In Opinion No. 2002-270, the Attorney General also ruled that Section 31-12-8 of the Code requires the State of Alabama to reinstate annual leave that a reservist/public employee felt compelled or was required to take under the circumstances and in the exercise of his or her independent judgment as a result of being called to active duty in the War on Terrorism. Again, the League feels that this provision is optional for municipalities because it applies only to an employee who is covered by 31-12-7.

NOTE: In the League's opinion, if a municipality elects to grant benefits pursuant to either Sections 31-7-6, 31-7-7 or 31-7-8, they must also grant the additional benefits provided in each of these other sections as well. In other words, a municipality cannot grant an employee the pay difference permitted in 31-7-6 without also granting their employees the rights protected by Sections 31-7-6 and 31-7-8. A municipality may, however, refuse to grant any of these benefits. If they do grant any of these benefits, though, they must grant all.

Federal Reemployment Rights

Federal law also provides job security for employees who leave their jobs for military service. Chapter 43 of Title 38, United States Code, commonly known as the Uniformed Services Employment and Reemployment Rights Act of 1994, preserves the reemployment rights of these employees.

Courts have held that the protection of veteran's reemployment rights is a legitimate exercise of the Congressional power to raise armies. *Peel v. Florida Department of Transportation*, 600 F.2d 1070 (5th Cir. 1979). The Act clearly applies to municipal employees, although courts must consider local legislation in determining the rights returning veterans are due. *Smith v. Little Rock Civil Service Commission*, 218 S.W.2d 366 (Ark. 1949). Local legislation can increase the benefits a service member may receive, but it cannot reduce those benefits and rights.

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In *Peel*, cited above, the court held that the Act provides a floor for the protection of veteran's rights. The Act does not preempt state laws which provide greater or additional rights (such as Section 31-2-13 of the Alabama Code). 38 U.S.C. Section 4302(a). However, laws which conflict with rights granted under the Act are invalid. 38 U.S.C. Section 4302(b).

The Act is liberally construed for the benefit of returning veterans. *Coffee v. Republic Steel Corp.*, 447 U.S. 191 (1980). However, the Act is not unlimited in its protection of veteran's rights. *Smith v. Missouri Pacific Transport Co.*, 313 F.2d 676 (8th Cir. 1963). For instance, the veteran has the burden of proving that he or she has satisfied the statutory requirements and is entitled to the protection of the Act. *Shadle v. Superwood Corp.*, 858 F.2d 437 (8th Cir. 1988).

This burden, though, is not as difficult to meet as one might assume, because Section 4311(c) basically provides that an employer shall be considered to have discriminated against the service member if the military service was simply a motivating factor, rather than having to prove that military service was the ***sole*** motivating factor. As indicated below, if the service member meets this standard, the employer must then prove that the action would have been taken despite the employee's military service.

Congress spells out the purposes of the Act in Section 4301. These are:

1) to encourage noncareer service in the armed forces by eliminating civilian career barriers;
2) to minimize the disruption to the lives of persons serving in the military; and
3) to prohibit discrimination against individuals due to military service.

Discrimination

The Act prohibits employees from discriminating against individuals who have served in the military. Discrimination is defined as any termination; denial of employment or reemployment; or refusal to grant a benefit motivated entirely or in part by the applicant or employee's military service. The burden is on the employer to demonstrate that its action would have been taken regardless of the person's military service.

Reemployment Rights

To be eligible for reemployment, a veteran must:

1) Give notice (notice does not have to be in writing) to the employer that he or she has been in the military, unless notice cannot be given for military necessity (notice can be provided by someone other than the individual); and

2) apply for reemployment within the time frame set out in the Act.

There is, though, a five-year cumulative service limit on the amount of voluntary military leave an employee can use and still retain reemployment rights. The five-year total does not include: inactive duty training (drills), annual training, involuntary recall to active duty or additional training requirements determined and certified in writing by the Service Secretary, and considered to be necessary for professional development or for completion of skill training or retraining.

The time within which the individual must apply for reemployment varies depending on the length of the person's military service. If the service was for less than 31 days, or for an examination to determine fitness for service, the veteran must simply report to work on the first full scheduled work day following the completion of service and the expiration of eight hours for travel. Veterans are also entitled to reemployment following the eight-hour transportation period if they fail to report on time due to no fault of their own, or if reporting on time is impossible or unreasonable.

If the term of service was for more than 30 days, but less than 181 days, the veteran must apply for reemployment within 14 days of completing service. If it is impossible or unreasonable for the veteran to apply within this time, the veteran must apply on the first full calendar day possible.

If service was for more than 180 days, the veteran must apply within 90 days of completing service.

If the veteran is hospitalized for or convalescing from an illness or injury suffered during military service, the veteran must apply for reemployment at the end of the time needed for recovery. Again, the time within which the veteran must apply depends upon the length of service, as set out above. For example, a veteran who served less than 31 days but who is hospitalized following the 31 day period must report to the employer on the first full scheduled work day following the completion of service. As noted above,

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Legal Notes

By Lori Lein
League Counsel

COURT DECISIONS

Planning and Zoning: City development commission's decision to reject a developer's preliminary development plan after it had approved the developer's earlier sketch plan did not support developers' negligent misrepresentation or promissory fraud claims. As to the misrepresentation claim, the commission's approval of the sketch plan was not a "false statement of existing material fact," but rather a genuine approval followed by a change of mind regarding the advisability of the plan. As to the promissory fraud claim, the commission had not "intended to deceive" the developers by approving the sketch plan and, given the legal authority of the commission to approve or disapprove the preliminary plans, the developers' reliance on the approval of the sketch plan was unreasonable. *City of Prattville v. Post*, 831 So.2d 622 (Ala. Civ. App. 2002).

Bail Bonds: City's method for service of conditional forfeiture of bond notices, including unsigned notices indicating that notices had not been personally served and that notices were sent through general mail delivery, did not comply with statutory notice requirements for personal service or service by certified mail under the state's Bail Reform Act, and thus, the bonding company was not liable on its bond. *Briner v. City of Midfield*, 831 So.2d 53 (Ala. Civ. App. 2002).

ATTORNEY GENERAL OPINIONS

Property: A health care authority established pursuant to Section 22-21-310 of the Code of Alabama 1975, may donate property that is no longer used or needed by the authority to a municipality. 2003-039.

Taxation: The Alabama Mobile Telecommunications Services Tax applies to agencies of the State of Alabama as well as the counties and incorporated municipalities within the state. Therefore, municipalities are not exempt from paying the tax. 2003-040.

Jails: Alabama law does not provided any statutory procedure for disposing of any unclaimed personal property of inmates. Therefore, unclaimed personal property abandoned by transferred inmates may be disposed of by any reasonable method of trash disposal. 2003-044. NOTE: In this opinion, disposal after 30 days was considered reasonable.

Public Records: The federal law relating to the confidentiality of drug defendant records applies only to those alcohol and drug education/treatment providers that maintain such records for the purpose of treatment, diagnosis, and referral of patients and does not restrict a jailer from recording identifying information regarding the defendant or the defendant's arrest in a jail logbook, the contents of which is public information. 2003-048.

Appropriations: Whether a city may expend public funds for food and drinks at certain events is a factual determination. If the city council determines that an event serves a public purpose, public funds may be expended for inaugural events, banquets, picnics, and other such functions. 2003-049.

Public Records: The gross receipts tax or privilege tax paid by a cable company is not the type of sensitive proprietary information that Alabama Law protects.

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Therefore, a city may divulge the amount of privilege or license tax paid to a city by a cable company. 2003-052.

Courts: Corrections fund monies may be used to hire an additional magistrate for a municipal court, but cannot be used to furnish and employ personnel to staff a planned police substation. 2003-054.

Retirement: The ratification of Amendment 681 of the Constitution of Alabama of 1901 does not authorize elected city council members to participate in the Employees' Retirement System of Alabama. NOTE: Amendment 681 is a local amendment allowing Clay County to phase out supernumerary programs and allow elected or appointed Clay County Officials to participate in the Employees' Retirement System. 2003-056.

Tort Liability: Pursuant to Section 11-93-2 of the Code of Alabama 1975, a health care authority established pursuant to Section 22-21-310, et seq., of the Code of Alabama 1975, and its facilities, have the protection of the liability caps for the recovery of damages for bodily injury, death, or damage to property. 2003-058.

ETHICS COMMISSION OPINIONS

AO NO. 2002-52: A city council member who is employed by the city waterworks and sewer system may participate in discussions and vote on matters concerning the general operation of the waterworks and sewer system; provided, the matter discussed and/or voted on does not affect his or her employment with the waterworks and sewer system differently than it affects the employment of all other employees of the system. He or she may not vote on the appointment of members to the waterworks and sewer board because that would mean voting on the appointment of a superior

AO NO. 2003-04: A municipal utilities department may award a contract for facility cleaning services to the husband of a city employee when the contract is awarded pursuant to the competitive bid process and where the spouse is not involved in any aspect of the bid process. A copy of the contract must be filed with the Ethics Commission within ten days of the contract being awarded.

Future League Convention Dates and Locations

April 26-29, 2003
Huntsville

May 22-25, 2004
Birmingham

May 21-24, 2005
Montgomery

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the veteran would be permitted eight-hours for travel. The provisions dealing with impossibility or impracticality of reporting on time also apply.

The period necessary for the veteran to recover from the illness or injury may not exceed two years. However, a veteran may receive an extension for the minimum time required to accommodate circumstances beyond the veteran's control.

However, even if a veteran fails to apply for reemployment within the time required by the Act, he or she does not lose the protections the Act provides. Instead, the veteran merely becomes subject to the employer's rules and regulations regarding discipline and explanations for absences from scheduled work time.

Documentation

When a veteran applies for reemployment, the employer has the right to request documentation for the following purposes:

1) to prove that employee's application is timely;
2) to prove that the length of service did not exceed five cumulative years; and
3) to prove that the veteran's reemployment rights have not extinguished due to:
   a) a dishonorable discharge,
   b) a court martial,
   c) commutation of a court martial sentence,
   d) being AWOL for three or more months or
   e) for having been dropped from the military rolls for serving time in a federal or state prison.

A veteran is not required to produce documentation if what is requested is not available or does not exist. However, if the appropriate documentation later comes available and establishes that the employee's military service ended for a reason that would extinguish the veteran's reemployment rights, the employer may terminate the veteran.

Reemployment Positions

If the military service was for less than 91 days, a veteran is entitled to return to the position he or she would have held had employment not been interrupted. If the veteran is not qualified for this position, the employer must take reasonable steps to try to qualify the veteran. If the veteran cannot be qualified, the employer must place the veteran in the position he or she had before serving in the military.

Where the military service was for more than 90 days, the veteran must be placed in a position he or she would have held had employment not been interrupted, or to a position of like seniority, status and pay, if the veteran can reasonably be qualified for this position. If the veteran cannot be qualified, the employer must place the veteran in the position he or she held before serving in the military, or in a position of like seniority, status and pay.

As a general rule, the returning employee is entitled to reemployment in the position he or she would have held had the person remained continuously employed: the "escalator position." However, if the returning employee is not qualified for the escalator position and cannot become qualified with reasonable efforts by the employer, the employee is entitled to the job that he or she left, or a position of equivalent seniority, status and pay. If the employee is not qualified for that position for any reason other than service-related disability and cannot become qualified through reasonable efforts by the employer, the employee must be employed in any other position for which he or she is qualified and that most nearly approximates his or her former position. Reasonable efforts to render a returning veteran qualified for a position include providing training or retraining. An employer is also obligated to reasonably accommodate returning employees with service-related disabilities. However, an accommodation requiring significant expense, considered in light of the nature of the business or operation and overall financial impact on the business or operation, may be considered an undue hardship on the employer and remove this obligation.

If a veteran is not qualified due to a disability suffered during military service, and the disability cannot be reasonably accommodated, the veteran must be placed in a position with like seniority, status and pay to the position he or she would have occupied had employment not been interrupted. If the veteran cannot be qualified for a position, the employer must place the veteran in a job which retains the nearest approximation to the seniority, status and pay the veteran would have had if his or her employment not been interrupted.

When Reemployment is Not Required

An employer is not required to reemploy a veteran if the employee's circumstances have changed to make reemployment impossible or unreasonable, or if reemployment would pose an undue hardship of the employer. Further, an employer has no duty to reemploy a veteran if the employee's position was for a brief, nonrecurrent period without a reasonable expectation that employment would continue for an indefinite or significant period. The employer bears the burden of proving that any of these circumstances prevent rehiring a veteran.

At least one court has interpreted the predecessor to this provision. In *Mowdy v. ADA Board of Education*, 440 F. Supp. 1184 (D.C. Okla. 1977), the court held reasonable

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Military Benefits Overview	
Mandatory State Benefits	
Leave	**Purpose**
168 Hours of Leave	• Paid leave to serve in Reserve branches of the military or the Guard without penalty. Includes leave for training. • Job performance ratings, seniority, or any other job benefits may not be reduced due to the absence of the employee. • Policy may prohibit accumulation of leave while serving. *City of Birmingham v. Hendrix*, 257 Ala. 300, 58 So. 2d 626 (1952).
Additional 168 Hours	• Leave with pay while in the active service of the state by the Governor.
Optional State Benefits (Granting One of these Benefits Requires Granting All of these Benefits)	
The difference between active duty military pay and the higher public employment salary he or she would have received if not called into active duty for any employee who is called into active duty during the war on terrorism which began in September, 2001.	
Continued insurance coverage (individual and dependent).	
Reinstatement of any leave an employee used as a result of being called into active duty.	
Federal Benefits	
Job Reinstatement	• Less than 91 days, a veteran is entitled to return to the position he or she would have held. • More than 90 days, the veteran must be placed in a position he or she would have held, or to a position of like seniority, status and pay, if the veteran can reasonably be qualified for this position.
Anti-Discrimination	• No termination, denial of employment or reemployment, or refusal to grant a benefit motivated entirely or in part by the applicant or employee's military service.

Military Leave

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the failure to immediately rehire a returning employee where reemployment would have required firing the replacement or the creation of a useless position.

Miscellaneous Provisions

If two or more veterans request reemployment for the same position, the veteran who left first must be reemployed.

Section 4316(b) provides that an employee serving in the military is deemed to be on furlough or leave of absence, and is entitled to all rights and benefits which are due to such employees pursuant to the rules and regulations of the employer. However, the employee's seniority rights are not affected by their absence. The employee may contribute to any funded benefit plan to the same extent as other employees or furlough or leave of absence.

Employees who serve in the military are entitled to continue participating in any health insurance plan as spelled out in 38 U.S.C. Section 4317. However, no waiting period or exclusion can apply to any veteran whose insurance was terminated by reason of military service unless the exclusion or waiting period would have applied had employment not ceased. Employees may continue participating in employee pension plans as set out in 38 U.S.C. Section 4318. ■

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[1] As adopted, Section 36-8-3 (b) states that if the regular official fails to notify the appointing authority, the authority has 30 days from the date the official enters service to temporarily fill the vacancy. This was an error that occurred during the legislative process. The section should provide that if the regular official fails to notify the authority within 30 days after entering service, the authority may then temporarily fill the vacancy. Municipalities should follow Section 36-8-2(b) as written; however, the League will attempt to amend this provision in future legislative sessions.

[2] During the 168 hours of paid service under 31-2-13, an employee's insurance benefits would continue. This is, as indicated above, a cap on salary a municipality may pay while an employee is on active duty unless the municipality elects to come under 31-12-6.

Obituaries

Jim Smith

Jim Smith, Creola's first mayor, died on December 22, 2002, at age 83. In 1978, he took office when the town had just 500 people, becoming the first of the town's four mayors. In 1980, he resigned his position for health reasons. He was instrumental in developing Creola's first volunteer fire dept. and attended Creola Methodist Church. He had six children, 13 grandchildren and several great-grandchildren. ■

Roy Jackson Hobbs

Roy Jackson Hobbs, former mayor of Ashford, died on December 22, 2002. He served two terms on the Ashford City Council and began his first of three terms as mayor in 1984. He was elected to his third term in 1996.

Hobbs was a member of the Ashford Masonic Lodge and Antioch Baptist Church. In addition, he was a World War II veteran. He is survived by his wife of 55 years. ■

Olen Spencer

Olen Spencer, town council member of Vina, died on December 22, 2002. He was 82. Spencer had served on the Council for 22 years. ■

Roosevelt Bell

Roosevelt Bell, former councilmember of Birmingham, died on January 5, 2003. He was 76. Bell was first elected to the Council in 1985. He last served in 1997. He was a retired Social Security Administration manager and is survived by his wife, a son, a daughter, four grandchildren and two great-grandchildren. ■

Earnest J. "Pete" Kelley

Earnest J. "Pete" Kelley, the last living member of Graysville's first City Council, died on January 5, 2003 at age 97. ■

Howard Wayne Collier

Howard Wayne Collier, mayor of Waldo, died on January 7, 2003, at age 59. He had served as the town's mayor for the past 14 years. In addition, he operated a small country store where people could also pay their water bills. He was a member of the Waldo Volunteer Fire Department and a former member of the AL Army National Guard and Reserves. Collier is survived by his wife and one daughter. ■

The League extends its deepest sympathy to the families of our municipal colleagues.

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