

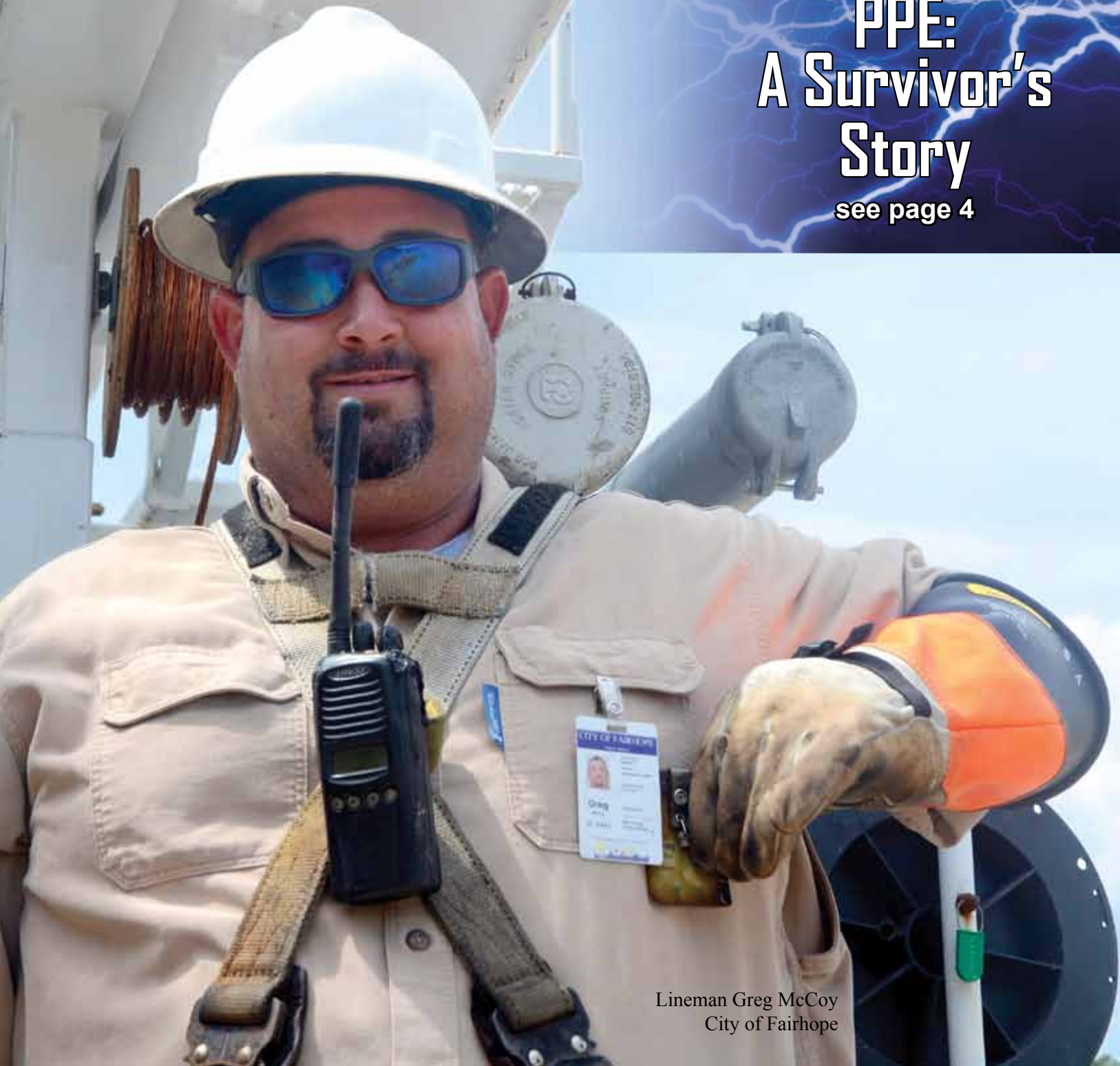
# The Alabama Municipal JOURNAL

August 2012

Volume 70, Number 2

## PPE: A Survivor's Story

see page 4



Lineman Greg McCoy  
City of Fairhope

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# The Alabama Municipal JOURNAL

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## On the Cover:

Lineman Greg McCoy with the City of Fairhope wearing the personal protective equipment (PPE) – safety harness, glasses, hardhat and gloves – that helped save his life on December 15, 2011. See page 4 for complete story.

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# PPE: A Survivor's Story

Carrie Banks • Communications Director • Alabama League of Municipalities



On December 15, 2011, at 11:40 a.m., lineman Greg McCoy with the City of Fairhope's Public Utilities Department had just completed installing temporary fiberglass pulse arms to a 70-foot utility pole and was lowering his utility bucket when an aged wooden cross anchor collapsed, bringing two live wires in contact with Greg – delivering 12,470 volts of electricity and a 3,000-degree arc flash fireball in the process.

## Even when everything is done right, something can still go wrong.

According to Fairhope Electric Superintendent Scott Sligh, the department was in the process of reconductoring several downtown lines by replacing narrow, outdated copper wire with larger, aluminum wire. From separate bucket trucks 10 feet apart, Greg and senior lineman Doug Brown were spreading existing energized lines out to the side of a 70-foot power pole so the aluminum wire could be pulled down the middle. Ben Patterson, who had been with the department for about six months, was supporting their needs from the ground while the buckets were in the air.

This particular pole carried 46,000-volt wires at the top and 12,000-volt wires further down where Greg and Doug were working. “Because this was in the middle of downtown, we had to do the work energized,” Scott said. “We couldn't afford to shut the power off for days at a time.” Once the temporary pulse arms were installed, they began to lower their buckets. “Greg lowered his bucket first,” he said, “and, as he's operating his bucket controls while looking down, the existing wooden braces collapsed, causing the cross arms to pivot, and two live wires – 12,470 volts – came in contact with Greg – one at the base of his neck, the other just above his right hip. The weight of the wires – around 200 pounds – knocked Greg into the bottom of his bucket.”

Immediately following contact, a hot-line tag, or emergency cut-off switch, activated. “The power went off in about a third of a second,” Scott said. Had the hot-line tag not been part of Fairhope's safety protocol, the wires would have remained live, meaning rescuing Greg from his bucket would have been impossible until the power had been turned off.

Doug, whose bucket was higher than Greg's and moving away from the pole, didn't see the wires make contact, but he heard the arc flash and realized Greg was in trouble. He and Ben, who was on the ground between the two trucks, reacted immediately. “I couldn't tell you an exact response time,” he said, “but I know it was less than two minutes that we had him out of that bucket and laying on the ground. In my opinion, we couldn't have done it any better.”

Minutes later when Scott arrived on the scene, Doug and Ben had rescued Greg and the paramedics were on the way. “They had cut his (fall protection) harness off him, and he was conscious and breathing,” Scott said. “His eyes were open, but he was in shock and struggling against his coworkers to get up.” Greg's face had turned a deep crimson from the fireball flash caused by the shock, so when his protective sunglasses were removed, his skin looked normal underneath, but an outline of the glasses remained. The flash singed his goatee, but, thanks to his nonconductive hardhat, his hair and the top of his head were unaffected.

Greg was air-lifted to South Alabama Regional Burn Center where he received two skin grafts and spent 11 days recovering from severe burns along his right side from his neck to his hip. He was released on December 26<sup>th</sup>, and, after nearly three months of rehab and physical therapy, Greg returned to work on March 6<sup>th</sup> with no restrictions.



*continued on page 34*

# The President's Report

Mayor David Bradford • Muscle Shoals



## League Policy Committees Play Important Role in Setting Legislative Agenda

The League consists of the president, vice president and the executive committee, which is composed of five elected municipal officials from each of the state's seven congressional districts, the active past presidents and the executive director. League officers and members of the executive committee are elected by the voting delegates at the annual convention.

In addition, six standing committees are charged with the review and development of League policies and goals, which encompass a broad spectrum of issues affecting municipal government. The chair and vice chair of each of these standing committees are also elected annually at the convention. Committee members are selected by the respective committee chairs to provide representation from each congressional district and to ensure representation of cities and towns of all sizes on each committee.

### Standing Committees

The League's six standing committees are:

- State and Federal Legislation, which also serves as a resolutions and screening committee
- Finance, Administration and Intergovernmental Relations
- Energy, Environment and Natural Resources
- Community and Economic Development
- Transportation, Public Safety and Communication
- Human Development

These committees meet annually with resource advisors to review existing League policy and the national policy and to adopt revised goals and recommendations in the respective areas of each committee. The Committee on State and Federal Legislation meets before each Regular Session of the Alabama Legislature to consider the recommendations of the standing committees and to develop the League's legislative program. This committee also carefully studies proposed legislation that may prove harmful to municipal government. While the legislature is in session, the committee may meet to assess

the progress of the League program and to review potentially dangerous legislation. The committee has the additional duty of meeting at the annual League convention to review resolutions prepared for submission at the annual business session and to receive suggested resolutions from individual delegates.

### Policy Committees

The five policy committees convene in August at League headquarters to hear from state and federal resource advisors and to update their policy statements for the League's Policies and Goals document, which can be found on the League's website at [www.alalm.org](http://www.alalm.org). (From the home page, click the "About the League" tab, and then click on "Policies and Goals.") This important document is then used by the Committee on State and Federal Legislation when it meets in January to develop the League's Legislative Package for the Regular Session. Below is a description of the League's five policy committees.

### Committee on Finance, Administration and Intergovernmental Relations (FAIR)

FAIR reviews and develops policy on fiscal matters affecting municipalities, including municipal administration, intergovernmental mandates, personnel policies, liability, public records retention/destruction, workers and unemployment compensation and revenues and finance. The Committee also reviews trends relating to consolidation of jurisdictions and potential threats to the integrity of local government.

### Committee on Energy, Environment and Natural Resources (EENR)

EENR reviews and develops policy on environmental issues, energy initiatives and quality of life considerations, including water and air quality, solid waste, hazardous/toxic wastes and pollution control. The Committee also reviews Alabama trends relating to hazardous and solid waste disposal and air and water pollution as well as garbage disposal methods, regional disposal areas, incineration, land fill and rodent and vector control.

### **Committee on Transportation, Public Safety and Communication (TPSC)**

TPSC reviews and develops policy on transportation programs and their revenue sources and allocations; public works programs, particularly those related to infrastructure development; public and private utilities, including telecommunications; and public safety issues, including crime prevention, law enforcement, fire prevention and protection, emergency medical services, emergency management and response, motor vehicle safety and animal control.

### **Committee on Human Development (HD)**

HD reviews and develops policy on social service and educational issues affecting municipalities. The Committee also reviews ways municipalities may improve the local environment for health care, mental health programs, juvenile and senior citizen programs, developing training and employment opportunities, welfare reform and Medicare and Medicaid programs.

### **Committee on Community and Economic Development (CED)**

CED reviews and develops policy on factors affecting the physical development of cities and towns, including community, industrial and economic development; tourism and recreation; housing; planning and zoning; code enforcement; enterprise zone development and regulation; and downtown redevelopment.

### **Conclusion**

The League's policy committees serve a very important function within the organization – *your* organization. If you're not currently serving on a committee, I encourage you to become active. To sign up for a committee, email the League's Member Services Director, Theresa Lloyd, at [theresal@alalm.org](mailto:theresal@alalm.org). She'll be happy to point you in the right direction! ■

# Call For Entries

## 2013 Municipal Quality of Life Awards

### **This awards program has three main objectives:**

1. To recognize successful, innovative projects that improve the quality of life for citizens.
2. To share those projects with other municipalities.
3. To demonstrate the value of cities and towns.

### **ONE winning entry and ONE honorable mention will be chosen from each of the three population categories:**

under 5,000 • 5,001 – 12,000 • 12,001 and over

### **Entries for each population category should focus on one of four subject areas:**

- Economic Development (community development and planning projects)
- Public Safety (includes emergency service projects)
- Public Works (includes infrastructure projects)
- Public Service (anything not covered in the three subject areas listed above)

Find out more about the Quality of Life program on our website: [www.alalm.org](http://www.alalm.org)



*Fall Walk, Eclectic, AL  
Photo by: Sania Taylor*

**DEADLINE FOR ENTRIES: November 2, 2012**

# Municipal Overview

Ken Smith • Executive Director



## League Policy Committee Members

As League President Mayor Bradford pointed out in his column, the League has five standing policy committees comprised of mayors and councilmembers from each congressional district in the state. The committee chairs recently made appointments to these important League committees, which will convene this month at League headquarters to hear from state and federal resource advisors and to update their policy statements for the League's *Policies and Goals* document. This important document will be used by the Committee on State and Federal Legislation when it meets in November to develop the League's Legislative Package for the 2013 Regular Session. The League would like to thank the following committee members for their service in this important policy process:

### Finance, Administration and Intergovernmental Relations (FAIR)

**Chair:** Councilmember David Hooks, Homewood  
**Vice Chair:** Councilmember Adam Bourne, Chickasaw

### Members from Congressional Districts

1. Councilmember Debbie Quinn, Fairhope  
Mayor Billy Middleton, Loxley  
Mayor Charles Murphy, Robertsdale  
Councilmember Veronica Hudson, Saraland
2. Mayor Lomax Smith, Cottonwood  
Mayor Mike Schmitz, Dothan  
Mayor Jay Jaxon, Jr., Eufaula  
Mayor Pete Wolff, III, Evergreen  
Mayor Fred M. McNab, Pinckard  
Councilmember Lisa Sconiers, Slocomb
3. Mayor Tony Wilkie, Centre  
Mayor Lew Watson, Lincoln  
Councilmember Claude Kitchin, Lincoln  
Councilmember H. H. Kuykendall, Lincoln  
Mayor Gary Fuller, Opelika  
Councilmember David Canon, Opelika  
Mayor Leon Smith, Oxford
4. Councilmember Jenny Folsom, Cullman  
Mayor Ray Nelson, Fayette  
Mayor Bill Jordan, Fort Payne  
Councilmember Robert Avery, Gadsden  
Councilmember Donald Myers, Guntersville  
Councilmember Charles Black, Priceville  
Councilmember Larry Waddell, Priceville

5. Mayor William R. Marks, Athens  
Councilmember William T. Powers, Gurley  
Mayor Dwight Tankersley, Hartselle  
Mayor Ian Sanford, Sheffield
6. Councilmember Katherine E. Ennis, Helena  
Councilmember Karyl Rice, Pelham  
Councilmember Teresa Nichols, Pelham  
Councilmember Andrea Hunter, Westover  
Councilmember E. Lee McCarty, Wilsonville
7. Councilmember N. Craig Sanderson, Irondale  
Mayor Loxcil Tuck, Tarrant  
Councilmember Charles Allen, Thomasville  
Councilmember Don Moore, Uniontown

### Committee on Energy, Environment and Natural Resources (EENR)

**Chair:** Mayor Rusty Jessup, Riverside  
**Vice Chair:** Mayor Omar Neal, Tuskegee

### Members from Congressional Districts

1. Mayor Howard Shell, Atmore  
Councilmember Ralph Hellmich, Foley  
Mayor Ron Davis, Prichard  
Councilmember Joe McDonald, Saraland
2. Councilmember Kenneth C. Mount, Andalusia  
Councilmember Hazel Griffin, Andalusia  
Councilmember Elliott Whitton, Columbia  
Mayor Terri B. Carter, Repton  
Councilmember Charles Meeks, Troy
3. Councilmember Richard Langford, Alexander City  
Councilmember Susie Jones, Hobson City  
Mayor Johnny L. Smith, Jacksonville  
Councilmember Billy J. Pearson, Lincoln
4. Mayor Tim Walker, Boaz  
Councilmember Bill Stewart, Gadsden  
Mayor Corey Harbison, Good Hope  
Mayor Rena Hudson, Warrior
5. Councilmember Hermon Graham, Florence  
Councilmember Janice LeMay, Killen  
Councilmember Joseph E. Pampinto, Muscle Shoals  
Mayor Melton Potter, Scottsboro
6. Mayor David M. Frings, Alabaster  
Mayor Dennis Stripling, Brent  
Councilmember Jackie Hambrick, Clay

*continued on page 32*



# Judicial Correction Services

## Case Supervision for Misdemeanor Courts

Collect & Successfully Close Twice As Many  
Partial Payment Cases

### Benefiting the Court...

"...(JCS's) service has decreased my magistrates' probation workload and court sessions by 65%...collections are at an all time high..."

- Court Administrator  
Large Municipal Court

"JCS has improved our court operations greatly with their professionalism and by the amount of monies collected."

- Court Clerk  
Large Municipal Court

"We are now collecting more than 90% of our fines, and I see far fewer return visits from those I sentence to probation."

-Judge  
Georgia Municipality

### Benefiting the Community...

"JCS has provided great cooperation with the County to cut these overhead costs that have been growing...It's everyone's goal not to have to build more jails. That and these high costs of keeping someone in jail are a big drain on county resources that can be better used elsewhere."

- Former Director of Corrections  
Large Florida State Court

"We have saved on jail expenses and issued fewer warrants."

- Court Clerk  
Large Municipal Court

"...we found that a full service probation provider like JCS can be instrumental in controlling the growth of the jail population and assuring the appropriate use of expensive jail cells."

- Judge  
Alabama Court

### Benefiting the Defendants...

"JCS has helped me understand the bad decisions I have made in my life. Through their guidance I have been given a chance to start over."

- Emma G., Defendant  
Florida State Court

"...thank you for getting me into a treatment program. I'm loving my sobriety. It's a wonderful life. It does work One Day At A Time."

- Danny B., Defendant  
Marshall County, Alabama

"Thank you for everything. Even though you did not have to do it, you did it anyway and it was much appreciated. You kept me out of jail."

- Craig A., Defendant  
Foley, Alabama

**Judicial Correction Services**

888-527-3911 Hoover, Alabama & Locations Throughout Alabama



# Your Role as a State House Advocate

## The Importance of Advocacy and an Overview of the 2012 Regular Session

Gregory D. Cochran, CAE • Director of Intergovernmental Relations • ALM

The 2012 Regular Session of the Alabama Legislature was a very active session with consideration of the State general and education trust funds, reforms to the recently enacted immigration law, changes to state and education employee retirement benefits as well as several other high-profile issues.

The Alabama League of Municipalities monitors legislative issues year-round. During the Session, League staff not only lobbies to pass legislation on behalf of our membership but also works extremely hard to curtail legislation that might damage the ability of cities and towns to provide for their citizens. Given that one third of the issues considered by the Alabama Legislature have a direct impact on municipal government, the importance of advocacy has never been more clear. With that said, it is vital that not only League staff but also League members build strong relationships with our Legislature.

Many times, we assume local legislators understand the “inner workings” of our municipalities. We fail to consider that the Legislature is mostly comprised of men and women who are small business owners, attorneys and corporation executives who have no municipal government experience. They use public parks and recreation areas, water and sewer systems, sidewalks and infrastructure without a true understanding of how a municipality builds and maintains these citizen conveniences. They don’t realize the effort it takes to maintain existing infrastructure, let alone what’s required to expand or recruit quality-of-life endeavors within our communities.

Therefore, as locally elected municipal officials, one of your roles is to become a State House Advocate – to develop relationships with your legislators and to be ready to vehemently defend or oppose legislation that affects your city or town. In order to become an effective advocate, you must first introduce yourself and your community to your local legislators. Over coffee or tea, discuss critical projects and goals for your community, the real-world challenges you face and any recent accomplishments you’ve achieved. Spend time taking your legislators on a tour of your municipality, and introduce them to key employees. Allow them the opportunity to discuss issues with your directors of parks and recreation and public works, your chief of police and finance director. Provide them the knowledge and understanding of where tax dollars are being used to benefit your citizens. Remind your local legislator that you *both* represent the same electoral base. Be very specific about the issues that are important to your municipality and the advantages of working cooperatively in achieving your goals. Encourage them to seek your opinion on bills introduced during the Session that have an impact on your municipality, but remember – the onus is always on *you* to build the relationship and initiate communication with your local legislators regarding these issues.

This is where the League staff can assist you in your advocacy efforts. By providing you with two key e-newsletters – the *State House Advocate* and the *Legislative Bulletin* – during the legislative session, the League apprises you about the introduction of bills and their status as well as the most recent action from both chambers. Throughout the Session, the *State House Advocate* is emailed to subscribers on Mondays, and the *Legislative Bulletin* is sent on Fridays. If you don’t already receive these e-newsletters, you can subscribe by visiting [www.alalm.org](http://www.alalm.org) and clicking on the “Sign up for our e-newsletters” link, located under our header near the top of the homepage.

During the 2012 regular session, 585 Senate bills and 785 House bills were introduced. Year-round, legislators are pulled in a thousand different directions from more than 300 association advocates, corporate representatives and contract lobbyists – and



# LEAGUE LEGISLATIVE FEATURE

that doesn't include the hundreds of citizens who walk the halls of the State House each day asking for consideration of legislation important to their lives. Therefore, be mindful that building relationships with your legislators will take time and numerous coffee meetings and will require you to make contact weekly or bi-weekly during the Session to keep them informed on issues important to your communities.



*The League sincerely thanks the following Senators for sponsoring League legislation during the 2012 Session (left to right): Senators Scott Beason, Paul Sanford, Linda Coleman, Dick Brewbaker and Jabo Waggoner.*

legislative issues with several talented, knowledgeable and highly energized lobbyists. I'd like to thank the following individuals for spending their Wednesdays with us to share their insight and help us coordinate our advocacy efforts: Hal Bloom, Allen Sanderson and Perry Roquemore, Jr., with The Bloom Group; Martin Christie and Maeci Martin with Christie Strategy Group; Greg Jones with the Jones Group; Beth Marrietta Lyons with Lyons & Crane; Michelle Jordan and Steve Raby with the City of Huntsville; and Mark Gaines with Adams & Reese.

Several hard fought legislative successes during the 2012 Session can be attributed to the League's collaboration with these individuals. Municipalities now receive a share of the increased court cost fees enacted by the Legislature and can establish entertainment districts allowing open containers. In addition, we preserved municipal authority to regulate the sale and use of fireworks, provide waste removal services and use electronic red-light traffic cameras. These issues will surface again next year. We already know several special interest groups will be seeking legislative approval in the 2013 Session to preempt municipal authority over fireworks; preempt municipal commercial waste management services; preempt the use of electronic red light cameras; permit fee increases for ADEM; and make reforms to the Alabama Constitutional Articles relating to local governments. Therefore, today is not too early to begin having conversations and cultivating relationships with your local legislators.

The 2012 Regular Session concluded in May, but *now* is the time to begin preparation for the 2013 Session that will begin in February. The League's five policy committees will convene this month to discuss legislative priorities – activating the first step in establishing the League's 2013 legislative agenda. If you don't currently serve on a committee, I encourage you to become involved. Information on each committee, as well as a copy of our *Policy and Goals*, is available on the League's website at [www.alalm.org](http://www.alalm.org).

Please feel free to call upon your League staff if you need any assistance. We anticipate an extremely busy 2013 Session that will require us to be vigilant and aggressive. ■

Throughout its 77-year history, the League's greatest legislative successes have been achieved when our membership rallied and spoke with a unified voice for or against specific legislation. It is incumbent that we work together to achieve goals beneficial to all municipalities. Advocacy is the lifeblood that will help keep your community healthy, vibrant and relevant.

Your League staff spends countless hours at the State House during the legislative sessions informing legislators of our members' concerns on bills affecting municipalities; however, we are always seeking ways to improve our advocacy efforts. Two years ago, as a way of improving the coordination of our advocacy efforts, we began hosting weekly meetings during the legislative session with a key group of contract lobbyists who represent approximately 15 municipalities of varying sizes. These meetings have morphed into a tremendous opportunity for us to collaborate on key



*The League sincerely thanks the following House Members for sponsoring League legislation during the 2012 Session (left to right): Representatives Dan Williams, Steve McMillan and Jack Williams. (Not pictured: Representative Chris England)*

## Building a Better Alabama

By Governor Robert Bentley

Together with the Legislative Leadership during the 2012 Regular Session, we were able to continue the reforms we campaigned on in 2010. We faced several challenges, but I believe we made great strides in several key areas. I want to share with you some of our strongest accomplishments from the Governor's Office and our accomplishments in cooperation with the Legislature. Each of these initiatives will benefit Alabama.

### ATRIP

This is a program that will help communities all across the state. There are more than 59,000 miles of roads and 8,650 bridges across Alabama. Thousands of these bridges are in desperate need of rehabilitation, and many of our roads are crumbling. Often, local governments don't have the funding they need to make urgent improvements. Having reliable roads and bridges is a matter of public safety. It's also an issue of economic development for our communities. That's why I created the Alabama Transportation Rehabilitation and Improvement Program – also known as ATRIP.

Through the use of GARVEE bonds, we are able to access future federal dollars for the road and bridge projects that need to move forward immediately. We at the state level are working with local governments across Alabama to give them access to that funding through an application process. During Phase I of funding, every eligible applicant received at least one project. At least two additional rounds of funding are planned, one in fall 2012 and one in spring 2013. Projects not selected in the initial phase of funding are eligible for submission during the second and third phases.

The 105 projects that I've already approved will enhance public safety, and they will also help communities attract new jobs and economic development. Companies look for good infrastructure when they decide where to build new facilities. Through ATRIP, our communities will have access to the federal funding they need to make necessary improvements.

### Single Point of Filing

This is a common-sense measure that eliminates red tape for business tax filings in Alabama. Under previous law, businesses with multiple locations were burdened by having to file tax returns in multiple jurisdictions using various tax filing processors. This process was antiquated and cumbersome.

Working with the Legislature, we created the "Optional Network Election for Single Point Online Transactions," known as ONE SPOT – a single-point electronic filing system for businesses to file all sales, use and rental/lease tax returns and make the associated payments. With the ONE SPOT system, the Alabama Department of Revenue can offer businesses an efficient process that eases the burdens associated with tax filings in multiple taxing jurisdictions. This service is free of charge for businesses and local jurisdictions.

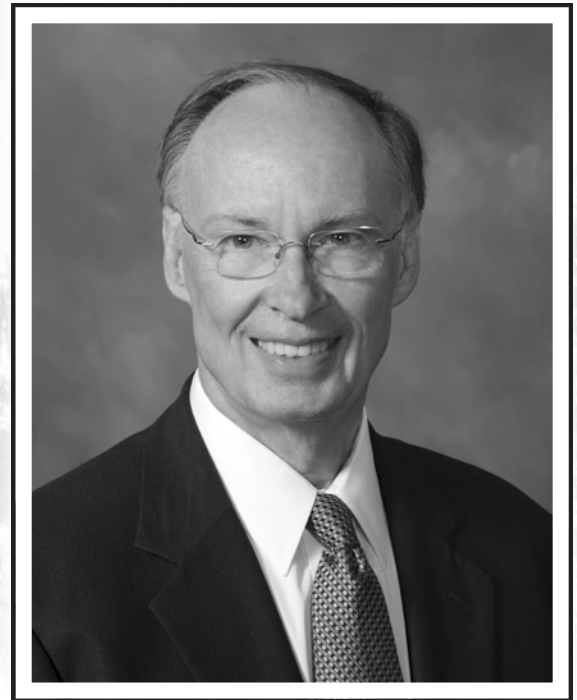
### Pension Reform

The economic realities of recent years made it clear that steps needed to be taken to ensure the long-term solvency of Alabama's retirement system. The measures we enacted will protect the retirements of hard-working Alabamians who are depending on the retirement system. And the changes do not affect current employees or current retirees.

Over time, the changes will save taxpayers \$5 billion and will help the retirement system stay solvent for future generations. Many other states across the country have adopted similar measures, and, in Alabama, we were able to bring stakeholders to the table and work together on a comprehensive, reasonable and fiscally responsible measure. The changes honor Alabama's commitments to current employees while still providing a solid retirement for future employees.

### Streamlining Government

We owe it to taxpayers to be good stewards of the money they send to Montgomery, and in 2012, we made great strides in streamlining state government operation to make it more effective and efficient. We merged the Department of Labor with the Department of Industrial Relations. We also moved the Alabama Industrial Development Training program into the Alabama Department of



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Commerce so they could work hand-in-hand in their efforts to recruit new jobs and development to the state. It just makes sense to make sure our efforts are consolidated and united for the good of the state.

## Looking Ahead

In September, Alabamians will have the opportunity to vote on a constitutional amendment that would move a fraction of the money in the Alabama Trust Fund to the General Fund. This would allow us to maintain essential state services without further, catastrophic budget cuts to various agencies. This is also a measure that allows us to live within our means without raising taxes on hard-working families.

The economic recession hit Alabama hard. While we are rebounding, the state's General Fund is slow to recover from the downturn of recent years. Many state agencies have already experienced deep cuts, and, as I've mentioned, we've made progress in streamlining government and saving state dollars. A 'yes' vote on the amendment in September will help us avoid the further, more devastating cuts that would come if the amendment were to fail.

Consider this: we have roughly \$2.5 billion sitting in savings in the Alabama Trust Fund. Why would we make catastrophic cuts when we have more than enough money in savings to avoid those cuts? Why would we raise taxes when the money we need is already there? The constitutional amendment would allow us to access less than one-fifth of the money in savings to get us to a more sound financial position.

This is not a "patch" or "kicking the can down the road" as some have said. The reason is because, moving forward, we have successfully identified stronger sources of state revenue that will go into our General Fund budget. The amendment is simply a bridge to get us to the point where that stronger revenue will be in place.

We save money for rainy days. And this is one of those times when we need to access some of what we've saved. My hope is that you will join with me and vote for this important amendment Sept. 18.

## Thank you.

I appreciate your support and your hard work and dedication to improving Alabama's communities. Our state faces some challenges, but we also have tremendous opportunities. I am always encouraged whenever I visit our local communities and see the determination, ingenuity and strength of our citizens. I am thankful for the opportunity to serve the great people of the great state of Alabama.

*Dr. Robert Bentley was elected to the Alabama House of Representatives in 2002 and served two terms in the State House. He was elected Governor of Alabama on November 2, 2010, with a platform to grow the economy and create jobs without increasing taxes or spending. He believes there should be more transparency and accountability in Alabama's government. To contact the Governor's Office, call (334) 242-7100.*

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## Sailing Against the Wind

### A Recap of the 2012 Alabama Senate Accomplishments

By Lieutenant Governor Kay Ivey

**W**ithout a vibrant economy, the tasks of operating state and local governments can be tough, like sailing into the wind. I am happy to report, through your Legislature's commitment to bringing jobs to Alabama, our state is on the move!

Our unemployment rate has dropped to 7.4 percent, down from 9.3 percent a year ago and well below the national rate at 8.25 percent. These numbers speak volumes of our state's leadership, including Governor Robert Bentley, Senate President Pro Tem Del Marsh and House Speaker Mike Hubbard. Although we did not accomplish everything we hoped to this session, we made significant headway in creating jobs, increasing transparency and streamlining state government.

As your Lieutenant Governor, I had the high honor of presiding over the second regular session of this quadrennial, which began on February 7, 2012. During the 30 legislative days before we adjourned on May 16, the Alabama Senate, under the direction of President Pro Tem Marsh, worked hard to face the challenges of the state's budgets while ensuring essential services were maintained. During the Regular Session, 585 bills were introduced for consideration in the Senate. As the President of the Alabama Senate, I assigned each of these bills to one of the 22 standing Senate committees where they were reviewed, amended and acted on for consideration by the full Senate. As a result, 148 Senate bills successfully completed the legislative process and were enacted. Here is a recap of some of these bills, particularly ones that impact our economy.

The new majority in the House and Senate passed these pro-business bills with the support of Governor Bentley. SB459, sponsored by Senator Slade Blackwell, provides the option for businesses to file tax returns once through a free electronic system rather than filing in every municipality and county where it does business. SB400, sponsored by Senator Greg Reed, allows businesses destroyed by tornadoes in April 2011 to keep their tax breaks if they have to move to a new location to reopen. HB140, sponsored by Representative Micky Hammon and Senator Arthur Orr, will allow new and expanding businesses that spend at least \$100 million on capital improvements and that hire at least 100 people to delay the tax credit for up to four years.

Bills were passed in order to attract new industries to Alabama. HB243, sponsored by Representative Terri Collins and Senator Gerald Dial, increased incentives for the film industry to bring more productions to the state. HB144, sponsored by Representative Bill Roberts and Senator Greg Reed, allows economic incentives to be used to create new jobs in the coal industry. HB154, sponsored by Representative Dan Williams and Senator Slade Blackwell, provides tax breaks to data processing centers locating in Alabama. HB599, sponsored by Representative Rod Scott and Senator Clay Scofield, establishes tax incentives and capital credits for certain tourism attractions.

Other legislation was passed to encourage and maintain industries that already have a strong presence in Alabama. SB143, sponsored by Senator Jabo Waggoner, provides \$2.3 million to the State Department of Education to ensure all of Alabama's 1,848 teachers and principals who are certified by the National Board of Professional Teaching Standards get the \$5,000 salary supplements they were promised in years past. SB139, sponsored by Senator Clay Scofield, creates a friendly business climate for companies involved in building our state's road infrastructure. It limits the civil liability of a contractor or subcontractor who has worked on a state or local road project once the work is completed and accepted by the Alabama Department of Transportation. HB39, sponsored by Representative Paul Lee and Senator Ben Brooks, is designed to promote the aircraft industry by deeming parts and components, used to build military or transport aircraft, sales tax exempt. HB328, sponsored by Representative Chad Fincher and Senator Arthur Orr, creates tax incentives for the purchase and installation of irrigation systems to help improve agricultural production.

In addition, to these key economic development bills, I am extremely pleased that the Legislature displayed the courage to address the legislative pay raise that was passed in 2007. As a result, the people finally have the opportunity to vote on a constitutional Amendment in November that repeals existing laws regarding the compensation and expense reimbursement of the members of the Legislature. If approved by voters, the Legislature will no longer set or adjust its pay.

The last day of the session, legislators approved the General Fund Budget, the state's operating budget, providing \$1.67 billion for the next fiscal year, a cut of \$66.7 million from this year. The General Fund Budget, signed by Governor Bentley on May 24, 2012,



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provides \$603.1 million for Medicaid, an increase of \$27.7 million from this year. The corrections department, which oversees prisons, will get \$365.5 million, a cut of \$16.1 million from this year. Medicaid and prisons currently receive nearly \$1 billion, representing nearly 60 percent of the General Fund budget. Overall, the \$1.67 billion General Fund Budget is dependent on passage of a Constitutional referendum by the voters during a special election September 18, 2012. If approved, \$145.8 million will be transferred to the State General Fund Budget from the Alabama Trust Fund for three fiscal years, beginning with the 2012-2013 fiscal year.

Last but certainly not least, the Legislature approved a \$5.4 billion education budget that slightly reduces spending for public schools and universities but avoids teacher layoffs and protects current class sizes. Governor Bentley signed it May 24, 2012. Legislation was also passed to increase court fees, providing municipal courts with needed additional revenues.

As presiding officer of the Alabama Senate, I can assure you our chamber is firmly committed to working on your behalf. Your input is always welcome, and you may contact my office at 334-242-7900. I serve full-time from my office at the State House and speak often to groups across the state. When I am in your community, I look forward to interacting with League members I have counted as friends for many years. I am truly honored to serve as your Lieutenant Governor of the great State of Alabama.

*In 2010, Kay Ivey became the second woman, and the first Republican woman in Alabama history, to be elected to the post of Lieutenant Governor. She served as Alabama's State Treasurer from 2002 until 2010. For more information about the Lt. Governor's office, visit [www.ltgov.state.al.us](http://www.ltgov.state.al.us).*



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## **Results of the 2012 Legislative Session: More Jobs, Greater Efficiency in State Government and Steps Taken to Improve Education**

By Senator Del Marsh, President Pro Tempore,  
Alabama Legislature

**D**uring the 2010 election, the new majority in the Legislature ran on a promise to boost the private-sector economy, make state government more efficient and accountable to taxpayers and improve the quality of education for all Alabama children.

With two legislative sessions behind us, I'm proud to say that by working closely with Governor Robert Bentley, House Speaker Mike Hubbard and our colleagues in the House, and Lieutenant Governor Kay Ivey, we have stayed true to our word and are making great progress on these fronts. We are proud of the fact that new jobs were created as a direct result of legislation passed over the past two years.

During the 2012 Regular Session, for instance, lawmakers passed a bill that resulted in the immediate announcement of a project that will create more than 500 new jobs in four Alabama counties. This targeted incentive package, aimed at recruiting coal mining projects, helped land the Blue Creek Energy Project that will not only create new jobs but also result in a \$1.2 billion capital investment in Alabama's economy.

And that was one of the many bills passed this year that will have a positive economic impact. Other examples include the Heroes for Hire Tax Credit, which offers Alabama businesses a \$2,000 tax credit for hiring a veteran recently returning from war, and a public database of bids and contract proposals that will help ensure Alabama companies are able to compete for state contracts.

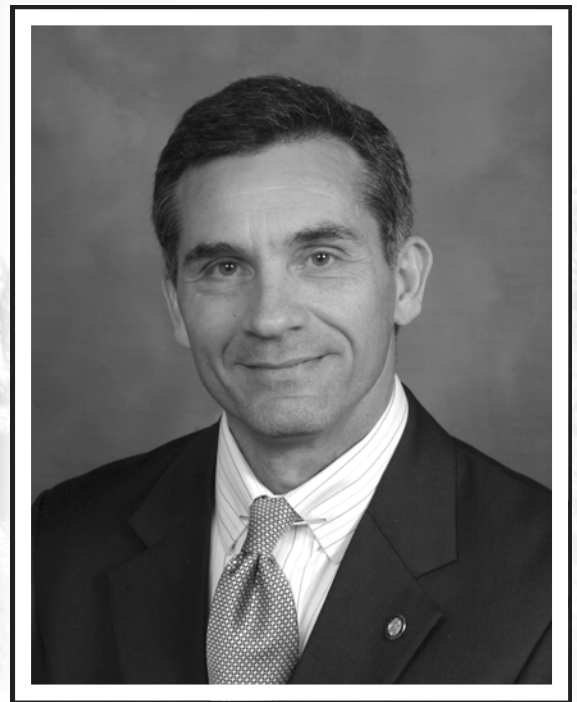
Especially during tough economic times, we have an obligation to make sure state government is operating in the most efficient and cost effective manner possible. It's been clear for quite some time that changes to the state's retirement system were necessary in order to protect the sustainability of our hard-working teachers' and state employees' retirement funds.

Last session, Governor Bentley took the lead in working with key lawmakers and Retirement Systems of Alabama CEO Dr. David Bronner to pass a comprehensive pension reform package. These changes will only affect new hires starting January 1, 2013, or later – not those already in the system – and are estimated to save the state more than \$5 billion over the next 30 years.

Another key government efficiency measure passed will streamline the process for businesses filing tax returns with cities and counties across the state – a key recommendation from the President Pro Tem's Initiative to Streamline Government and House Speaker Mike Hubbard's Commission on Job Creation. The Optional Network Election for Single Point Online Transactions – or ONESPOT – creates an electronic single point of filing system that will be made available for filing and remitting state and local sales, use, rental and lease taxes. Administered by the Alabama Department of Revenue, the system – required to be operational in time for returns and payments due in tax periods beginning after September 30, 2013 – will be available for use by both taxpayers and Alabama municipalities and counties at no cost.

Working closely with representatives from the Alabama League of Municipalities, Association of County Commissions, Alabama Department of Revenue, Alabama Retail Association and various business groups, we were able to pass this common-sense legislation that will significantly streamline the way businesses interface with state and local government.

Improving the quality of education in Alabama has been and will continue to be a priority in the Alabama Legislature. We are committed to doing anything and everything to ensure that our children are given the best opportunities available.



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It's no secret that excellence in education starts in the classroom, which is why lawmakers prioritized legislation that supports the needs of our teachers and incentivizes those who go above and beyond. One new law provides teachers in every Alabama classroom with \$300 to spend on classroom supplies. Another funds a \$5,000 annual bonus for teachers who take the initiative to become certified by the National Board of Professional Teaching Standards. Both reiterate the Legislature's commitment to supporting Alabama teachers and promoting a positive learning environment in the classroom.

In an unprecedented effort to ensure accountability in our schools, the Legislature passed a law to implement a school grading system and establish performance bonuses for improved student achievement. Schools will now be assigned with an easy-to-understand A-B-C-D-F letter grade that will be made public. Coupled with performance incentives, the new structure allows top performers to be recognized and rewarded and gives low performing schools a tangible incentive to improve.

These are only a few examples of the progress made during the 2012 Session. But there's still plenty of work to be done in order to continue moving Alabama forward. Next session, in addition to enacting pro-growth economic policies and working to improve the quality of education in our state, making state government more efficient and improving taxpayer services will be a top legislative priority. One area in particular will deal with the state's law enforcement functions. Governor Bentley recently signed an executive order to begin implementing recommendations from our Initiative to Streamline Government. This could save the state \$260 million over 10 years by consolidating more than 20 law enforcement agencies down to seven.

Our goal is always to provide better, more cost-effective and efficient services to Alabamians, and we will continue looking for ways to make state government work better for our citizens.

*Del Marsh represents Calhoun County along with portions of St. Clair County and serves as President Pro Tempore of the Alabama Senate. You may reach Senator Marsh by phone at (334) 242-7877, by e-mail at [Del.Marsh@alsenate.gov](mailto:Del.Marsh@alsenate.gov) or online at [www.alprotem.com](http://www.alprotem.com).*



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## Back to Work in 2012

By House Speaker Mike Hubbard

Alabama's movement toward responsible, conservative government didn't stop with last year's successful "Handshake with Alabama." In 2012, we built upon our momentum and passed several reforms that will help create jobs, give local communities more tools to improve education and rein in wasteful spending and debt.

The legislative leadership made it clear from the start that our top priority this year would be job creation and economic growth. That's exactly what happened, as we wasted no time passing pro-growth jobs bills that are already beginning to have a positive effect on Alabama's economy. Bills to provide growth and recruitment incentives in the energy, aviation, data processing and film industries all became law this year.

We're not out of the woods yet, but we are leading the nation in reducing unemployment. That's not an accident. Alabama is adopting policies that help businesses grow and create jobs, and it's having a real impact. In fact, as a direct result of the coal mining bill we passed this year, Walter Energy announced in May it would be building a \$1.2 billion facility in North Alabama that will create 531 high-paying jobs.

I'm especially excited about the public school accountability and performance incentive bill we passed this year because I think it's going to make a big difference toward improving schools in the years to come. This new law requires the state department of education to adopt a simple, comprehensive and consistent system to grade school performance on an A-B-C-D-F scale that everyone understands. It may not seem like a major shift in policy, but former Florida Governor Jeb Bush told me this single reform led to the major gains made in their state. The reason is simple – the more informed parents and community leaders are about the true performance of their local schools, the better able they are to make needed changes on the ground level.

Our goal is excellent teachers in every classroom. We want every child to have access to a quality education no matter where they live or how much money their parents make. That starts by ensuring accountability in all public schools and being honest with parents and community leaders about how their schools are performing.

The 2012 Legislative Session also saw the passage of a major overhaul to our state's pension plan that will protect the retirements of public employees and stabilize our Retirement Systems going forward. With estimates showing the state's retirement systems running out of money by as soon as 2023, changes had to be made to ensure the long-term financial stability of the state. This new law sets a minimum retirement age of 62 for most employees and 56 for law enforcement, saving the state more than \$3 billion over 30 years. These changes do not affect current employees or retirees. New rules will only affect new employees hired beginning in 2013.

We also repealed the infamous 62 percent pay raise the Democrats voted themselves in 2007 and are asking the voters – the people – to determine legislative pay on this November's ballot. If you looked around the country, I bet you wouldn't find any other states where the Legislature not only lowered its pay but also gave up the ability to ever raise it again. But that's what this plan does, and that's the right thing to do.

The number of positive, productive bills is too great to list. However, some of the highlights of the 2012 session include:

**The "Heroes for Hire" Tax Credit Act, House Bill 152, sponsored by Rep. DuWayne Bridges (R-Valley)**

- With wars winding down in Iraq and Afghanistan, thousands of Alabama veterans will soon return home to a difficult economy in which it is hard to find a job.
- This new law offers Alabama businesses a \$2,000 tax credit for hiring a veteran recently returned from war.



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## **Streamlined Tax Filing for Businesses, Senate Bill 459, sponsored by Sen. Slade Blackwell (R-Birmingham and Rep. Jack Williams (R-Birmingham)**

- This new law will streamline the process for businesses filing tax returns with cities and counties across the state, a key recommendation from both Senate President Pro Tem Del Marsh's Initiative to Streamline Government and House Speaker Mike Hubbard's Commission on Job Creation.
- The law creates an electronic single point of filing system that will be made available for filing and remitting state and local sales, use and rental and lease taxes.
- The system, known as ONE SPOT – Optional Network Election for Single Point Online Transactions will be administered by the Alabama Department of Revenue and available for use by both taxpayers and Alabama municipalities and counties at no cost. The system must be operational in time for returns and payments due in tax periods that begin after Sept. 30, 2013.

## **Spurring Investment in Struggling Communities, House Bill 257, sponsored by Rep. Jamie Ison (R-Mobile)**

- This new law will encourage economic investment and job growth in low-income areas by leveraging available federal tax incentives with new state tax incentive offerings.
- In exchange for their investments in qualified businesses and projects located in low-income downtown areas throughout Alabama, the state will offer investors a future tax credit.
- Investors could claim a 50 percent graduated tax credit over the course of seven years for investments up to \$240 million. The credit is zero for the first year and eight percent for each of the next five years, then 10 percent the seventh year.

I'm proud of the work the Legislature did in the 2012 Session. In the years to come, the Legislative leadership will continue to pursue policies that help jumpstart job growth, improve schools and make the best use of the taxpayers' money.

*Mike Hubbard represents the Auburn-Opelika area and serves as Speaker of the Alabama House of Representatives. You may reach Speaker Hubbard by email at [Mike.Hubbard@alhouse.gov](mailto:Mike.Hubbard@alhouse.gov).*

### **"We know we're making the right call when we buy Cat® equipment."**

When the Public Works Department in Tuscaloosa County, Alabama, solicits bids for heavy equipment, purchase price is just one factor it considers, says Engineering Coordinator Michael Henderson. "If there's a disaster in our area, we need to know our equipment, and our dealer will come through for us. We must know, beyond a shadow of a doubt, that the equipment is ready to work because response time is critical."

Factoring in Life Cycle Costs when purchasing equipment is equally important to Mike. "It's in the county's best long-term interests to consider total costs. When we choose Cat® equipment, we can be confident we're getting a quality machine, backed by a strong company and dealer. We also know that when it's time to cycle it out, there will be value left in that equipment."

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The National Institute of Governmental Purchasing (NIGIP), National Association of State Procurement Officials (NASPO) and National Association of Fleet Administrators (NAFA) endorse the use of Life Cycle Costing as a preferred procurement method.



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# The Legal Viewpoint

By Lori Lein  
General Counsel



## The Alabama Open Meetings Act

**T**he Alabama Open Meetings Act (OMA), codified at Sections 36-25A-1 through 36-25A-11, Code of Alabama 1975, was passed by the Alabama Legislature in 2005. It replaced what was commonly known as the Sunshine Law, Section 13A-14-2, Code of Alabama 1975. Although the OMA specifically repeals the former Sunshine Law, all specific references in the Code of Alabama 1975 to Section 13A-14-2 are preserved and are now considered to refer to the OMA instead. The idea behind this is to preserve any exclusion or inclusion from the requirement to hold public meetings that existed prior to the change in the law. This article summarizes the OMA and its impact on how municipalities conduct business.

### Who is Covered?

Meetings of all “governmental bodies” are subject to the OMA. While there is no question that municipal governing bodies must conduct open meetings pursuant to the requirements of the OMA, what other municipal entities must hold open meetings? And which gatherings of these entities are subject to the new law?

With regard to municipalities, the OMA defines governmental bodies to include the following:

1. All municipal “boards, bodies, and commissions” that “expend or appropriate public funds”; and,
2. All municipal “multimember governing bodies of departments, agencies, institutions, and instrumentalities, “including, without limitation, all corporations and other instrumentalities whose governing boards are comprised of a majority of members who are appointed or elected by” the municipality.

Thus, any municipal board or agency that has the power to expend or appropriate municipal funds must conduct open meetings pursuant to the requirements of the OMA. Additionally, the OMA applies to any instrumentality, including separate corporations, whose membership is composed of at least a majority of members who were

appointed by the municipality. The term “governmental body” does not include “voluntary membership associations comprised of public employees, counties, municipalities, or their instrumentalities which have not been delegated any legislative or executive functions by the Legislature or Governor.” Section 36-25A-2(4)(c), Code of Alabama 1975.

A volunteer fire department certified by the Alabama Forestry Commission is subject to the OMA. AGO 2006-108. Further, the provisions of the OMA apply to community action agencies that are established by a county, a municipality, a combination thereof, or a private, nonprofit agency newly established by local ordinance. Such entities may either voluntarily or, as a result of requirements placed on the agency by the Department of Economic and Community Affairs, follow the requirements of the OMA. AGO 2007-039.

Section 36-25A-2(6), Code of Alabama 1975, defines a “meeting” as any of the following:

1. “The prearranged gathering of a quorum of a governmental body, a quorum of a committee or a quorum of a subcommittee of a governmental body at a time and place which is set by law or operation of law”;
2. “The prearranged gathering of a quorum of a governmental body, a quorum of a committee or a quorum of a subcommittee of a governmental body during which the body, committee or subcommittee of the governmental body is authorized, either by law or otherwise, to exercise the powers which it possesses or approve the expenditure of public funds”; and,
3. “The gathering, whether or not it was prearranged, of a quorum of a governmental body, a quorum of a committee or a quorum of a subcommittee of a governmental body during which the members of the governmental body deliberate specific matters that, at the time of the exchange, the participating members expect to come before the body, committee or subcommittee at a later date.”

The term “meeting” does not include the following:

1. “Social gatherings, conventions, conferences, training programs, press conferences, media events, or other similar gatherings “so long as the governmental body does not deliberate specific matters that, at the time of the exchange, the participating members expect to come before the governmental body at a later date,” even if a quorum is present at these events; and

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

These definitions make it clear that there must be a quorum present for there to be a “meeting” under the OMA. The quorum requirement applies to both the governing body itself and all committees of the governing body. However, a quorum alone is not the full requirement for a meeting under the Act. A “meeting” under the OMA would include a quorum gathered at a “prearranged gathering,” such as a regular or special called meeting. Under the definition, a meeting would also include any gathering, prearranged or otherwise, of a quorum where members engage in deliberations of actions that are expected to come before the body at a later time. Fortunately, the OMA also makes it clear that there are certain types of get-togethers that are not covered, even if a quorum is present. This allows members to attend social events or conventions, or similar activities, together, provided that they do not deliberate matters that are expected to come before the body later.

A quorum of a governing body may attend a committee meeting, where notice was properly given for the committee meeting under the OMA, without also providing notice of a meeting of the governing body, as long as the governing body does not deliberate matters at the committee meeting that it expects to come before the governing body at a later date. If a quorum of the governing body has prearranged a meeting to occur in conjunction with the committee meeting, the governing body must provide notice of this meeting under the OMA. A quorum of the governing body may not hold an impromptu meeting at the committee meeting at which it deliberates specific matters expected to come before the governing body at a later date without violating the OMA. AGO 2011-014.

To be counted towards establishing a quorum, members of a governing body covered by the OMA are required to be physically present. There is no provision for obtaining a quorum by telephone conference. AGO 2006-071. Further, even if a quorum is physically present, additional members of a governmental body that are not present may not participate or vote in meetings through electronic means. A member of

the governmental body may, however, listen to a meeting through electronic means. AGO 2010-070.

For purposes of the OMA, an e-mail sent by one member of a governing body to other members expressing an opinion on a matter before the body does not, in and of itself, constitute a meeting under the OMA so long as there is no “deliberation.” If an e-mail is a unilateral declaration of a member’s idea or opinion, then it is not a “deliberation,” and without deliberation there is no meeting under the OMA. *Lambert v. McPherson*, --So.3d--, 2012 WL 1071632 (Ala. Civ.App. 2012).

### **Meeting Notice**

The public must be provided notice of meetings that are subject to the OMA. See Section 36-25A-3, Code of Alabama 1975. Municipal governing bodies provide notice of regular meetings by posting notice on a public bulletin board at city hall at least seven days prior to the date of the regular meeting. A separate corporation of which a majority of the membership is appointed by the municipality that has an office at a location other than city hall may instead provide notice on a public bulletin board in the principal office of the corporation. All other governmental bodies must post notice of each meeting in a location that is reasonably accessible by the public or in some other method that is convenient to the public.

It should be pointed out that there is a small ambiguity in the notice requirements under Section 36-25A-3(a)(3). Separate corporations are permitted to post notice at their principal office if they have one separate from the city hall. The notice provision then states that the public bulletin board must be at the office of the corporation or other instrumentality. It is unclear what other instrumentalities are covered. The League recommends that unless the entity in question is a separate corporation with an office at a location other than city hall, notice should be posted on a public bulletin board at city hall. Note that any entity may satisfy the notice requirement by posting at city hall. Additional notice may also be provided if desired.

Any change of the location or method for posting notices must be approved by the members of the governmental body at an open meeting and announced to the public at an open meeting. Section 36-25A-3(a)(5). Note that this is a two-step process. Both steps, though, can be performed at the same open meeting.

Section 36-25A-3(b), Code of Alabama 1975, sets out notice requirements for meetings other than regular meetings. For special called meetings, notice must be posted as soon as practical after a meeting is called. The notice must be posted no less than 24 hours before the scheduled start of the meeting, unless:

1. Notice cannot be given due to emergency circumstances

requiring immediate action to avoid physical injury to persons or damage to property; or

2. The notice relates to a meeting to be held solely to accept the resignation of a public official or employee.

In these instances, notice must be given as soon as practical but in no case less than one hour before the meeting is to begin.

The Attorney General has ruled that at least seven days' notice is required by the OMA for a regularly scheduled meeting of the city council or standing committee of the city when a meeting is established by organizational ordinance or resolution. As to meetings of the city council or standing committees that do not have regularly scheduled meetings set by ordinance or resolution, as well as meetings that are called pursuant to Section 11-43-50 of the Code of Alabama 1975, notice is to be posted as soon as practicable after the meeting is called but in no event less than 24 hours before the meeting is scheduled to begin. AGO 2006-027.

Section 36-25A-3(c) provides that the notice must include the time, date and place of the meeting. If a preliminary agenda is created, the agenda must be posted as soon as practicable in the same location or manner as the notice. AGO 2006-027. If a preliminary agenda is not available, the posted notice shall include a general description of the nature and purpose of the meeting. Please note, though, that the OMA specifically provides that the governing body may

still discuss at a meeting additional matters not included in the preliminary agenda. The Alabama Supreme Court has held that a governmental body did not violate the OMA by considering and voting on, at a special meeting, a resolution that was not on the agenda. *Underwood v. Alabama State University*, 51 So.3d 1010 (Ala.2010)

The posting by a municipal governing body of its organizational ordinance or resolution specifically stating the place, date, and time of regular council meetings and standing committee meetings and a general description of the nature and purpose of those meetings is sufficient to meet the notice requirements of the OMA.

If practicable, the governing body must also provide direct notification of a meeting to any member of the public or news media who has registered to receive notification of meetings. Section 36-25A-3(a)(6), Code of Alabama 1975. The municipality may require the person requesting notice to pay the actual cost of issuing notices, if there is one, in advance. Direct notice to persons who have registered shall, at a minimum, contain the time, date, and place of the meeting. This notice must be given at the same time the general notice is provided.

The governing body may promulgate reasonable rules and regulations necessary for the uniform registration and payment for direct notice and for the distribution of the notices. The governmental body has the authority to choose

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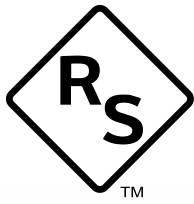
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the method of providing direct notice. This may include using electronic mail, telephone, facsimile, the United States Postal Service, or any other method reasonably likely to provide the requested notice.

### **Minutes**

The Act requires all entities subject to the OMA to keep accurate records (minutes) of all meetings. Section 36-25A-4, Code of Alabama 1975. The minutes shall include the date, time and place of the meeting, which members were present or absent, and any action taken at the meeting. These minutes must be maintained as a public record. Minutes are not required for executive sessions. It is important to note here that under the OMA, most “work sessions” or similar “pre-council” gatherings meet the definition of a “meeting” as discussed above. As such, there should be a record of work sessions and pre-council meetings.

### **Conducting Meetings**

All covered entities must adopt rules of parliamentary procedure and follow them during the meeting. Section 36-25A-5, Code of Alabama 1975. Unless specifically allowed by statute, votes shall not be taken during an executive session, nor may the body vote by secret ballot. All votes on matters before a governmental body, including, but not limited to, votes to appropriate or to authorize an employee to spend public funds without further authorization of the governmental body, to levy taxes or fees, to forgive debts to the governmental body, or to grant tax abatements, shall be made during the open or public portion of a meeting for which notice has been provided pursuant to this act. Voice votes are allowed.

### **Recording Meetings**

The League has frequently been asked whether members of the public may make audio or video recordings of a meeting. Section 36-25A-6 specifically allows any person in attendance at a meeting to make a recording provided the recording does not disrupt the conduct of the meeting. This does not apply to executive sessions. The governmental body may adopt reasonable rules for the implementation of this provision.

### **Executive Sessions**

The OMA specifically states that executive sessions are not required for any reason. Section 36-25A-7(a). It does, however, permit the body to enter into executive sessions for certain specified reasons. Unlike the Sunshine Law, the OMA provides a number of exceptions. These exceptions include the following:

(1) To discuss the general reputation and character, physical condition, professional competence or mental health of individuals or to discuss the job performance of certain

public employees. The entity may not go into executive session to discuss the job performance of an elected or appointed public official, an appointed member of a state or local board or commission, or any public employee who must file a Statement of Economic Interests with the Alabama Ethics Commission pursuant to Section 36-25-14, Code of Alabama 1975. The salary, compensation, and job benefits of specific public officials or specific public employees may not be discussed in executive session.

The Attorney General has ruled that this exception permits governmental boards to convene an executive session to interview current public employees in connection with promoting these employees to fill vacant positions when those positions do not require the interviewee to file a Statement of Economic Interests with the Alabama Ethics Commission. Only the portions of the meeting that involve the general reputation and character, physical condition, professional competence, mental health, and job performance of the employee may be discussed in executive session. The professional competence of a person may be discussed in executive session only when that person’s position qualifies as a profession as specified in Section 36-25A-2(8) of the Code of Alabama. AGO 2006-088. Further, the AG found that OMA permits the Alabama Aviation Hall of Fame Board to convene an executive session to discuss the general reputation and character of nominees for induction into the Hall of Fame and only those portions of the meeting that involve general reputation and character may be discussed in executive session. AGO 2010-011.

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

(3) To discuss with the attorney the legal ramifications of and legal options for:

a) Pending litigation;

b) Controversies not yet being litigated but imminently likely to be litigated or imminently likely to be litigated if the governmental body pursues a proposed course of action; or

c) To meet or confer with a mediator or arbitrator with respect to any litigation or decision concerning matters within the jurisdiction of the governmental body involving another party, group, or body.

Prior to voting to convene an executive session under this exception, an attorney licensed in Alabama must provide a written or oral statement reflected in the minutes that this exception applies to the planned discussion. This declaration does not constitute a waiver of attorney/client privilege. However, any deliberation between the members regarding

what action to take relating to pending or threatened litigation based upon the advice of counsel must be conducted in the open portion of the meeting.

(4) To discuss security plans, procedures, assessments, measures, or systems, or the security or safety of persons, structures, facilities, or other infrastructures, the public disclosure of which could reasonably be expected to be detrimental to public safety or welfare. If the discussion involves critical infrastructure or critical energy infrastructure information, the owners and operators of such infrastructure must be given notice and an opportunity to attend the session.

(5) To discuss information that would disclose the identity of an undercover law enforcement agent or informer or to discuss the criminal investigation of a person, other than a public official, who is alleged or charged with specific criminal misconduct allegations or against whom charges of specific criminal misconduct have been made, or to discuss whether or not to file a criminal complaint.

Prior to entering an executive session for any of these purposes, the entity must obtain a written or oral declaration entered on the minutes that the discussions would imperil effective law enforcement if disclosed outside of an executive session from a law enforcement officer with authority to make an arrest or a district or assistant district attorney or the Attorney General or an assistant Attorney General.

(6) To discuss the consideration the governmental body

is willing to offer or accept when considering the purchase, sale, exchange, lease, or market value of real property. However, the material terms of the contract must be disclosed in the public portion of a meeting prior to the execution of the contract. Only persons representing the interests of the governmental body in the transaction may be present during an executive session held pursuant to this exception. The entity cannot hold an executive session for this purpose if:

a) Any member of the entity involved in the transaction has a personal interest in the transaction and attends or participates in the executive session concerning the real property; or

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

(7) To discuss preliminary negotiations involving matters of trade or commerce in which the entity is in competition with private individuals or entities or other governmental bodies in Alabama or other states or foreign nations or to discuss matters or information defined or described in the Alabama Trade Secrets Act.

Prior to holding an executive session pursuant to this exception, a person involved in the recruitment or retention effort or who has personal knowledge that the discussion will involve matters or information defined or described in the Alabama Trade Secrets Act must advise the governmental body in writing or by oral declaration entered into the



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minutes that the discussions would have a detrimental effect upon the competitive position of a party to the negotiations or upon the location, retention, expansion, or upgrading of a public employee or business entity in the area served by the governmental body if disclosed outside of an executive session or would disclose information protected by the Alabama Trade Secrets Act.

(8) To discuss strategy in preparation for negotiations between the governmental body and a group of public employees. Prior to holding an executive session pursuant to this exception, a person representing the interests of a governmental body involved in the negotiations must advise the governmental body in writing or by oral declaration entered into the minutes that the discussions would have a detrimental effect upon the negotiating position of the governmental body if disclosed outside of an executive session.

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

#### **Section 36-25A-7(a), Code of Alabama 1975.**

Deliberations by a regional planning commission concerning credit and financial records of applicants for revolving fund loans must be conducted in an open public meeting under the OMA. There is no specific exemption under the act or under federal law that allows commissions to enter into executive session to discuss the credit and financial records of applicants. AGO 2006-068.

The OMA also spells out a specific procedure for entering into an executive session, other than one held for a quasi-judicial or contested case hearing. The procedure is as follows:

(1) A quorum of governmental body must first convene a meeting as defined in the OMA.

(2) A majority of the members of the governmental body present must adopt, by recorded vote, a motion calling for the executive session. The motion must state the reason for the executive session. If the stated reason requires an oral or written declaration to justify the executive session as set out above, the oral or written declaration must be made prior to the vote.

(3) The vote of each member, as well as the written or oral declaration, shall be recorded in the minutes.

(4) Prior to calling the executive session to order, the presiding officer shall state whether the governmental body

will reconvene after the executive session and, if so, the approximate time the body expects to reconvene. Section 36-25A-7(b), Code of Alabama 1975.

#### **Immunity**

The OMA specifically states that members of the covered entity and any of its employees participating in a meeting complying with the law have an absolute privilege and immunity from suit for any statement made during the meeting that relates to a pending action. This immunity is in addition to all others that may apply. Section 36-25A-8, Code of Alabama 1975.

#### **Enforcement**

The process for enforcing the OMA is significantly different from that followed for enforcing the former Sunshine Law. The Sunshine Law was part of the Alabama criminal statutes, and violations were enforced as criminal offenses, specifically misdemeanors. Instead, the new OMA is enforced as a civil violation as provided in Section 36-25A-9, Code of Alabama 1975.

The civil action must be brought in the county where the governmental body's primary office is located. A suit may be brought by any media organization, any Alabama citizen, the Attorney General, or the district attorney for the circuit in which the governmental body is located. However, no member of a governmental body may serve as a plaintiff in an action brought against another member of the same governmental body for an alleged violation.

An action alleging a violation of the OMA must be brought within 60 days of the date that the plaintiff knew or should have known of the alleged violation. In any event, though, any action under the OMA must be brought within two years of the alleged violation. The complaint must be verified and name in their official capacity all members of the governmental body who remained in attendance at the alleged meeting. The complaint must also specifically state one or more of the following reasons for the complaint:

(1) That the defendants disregarded the notice requirements for holding the meeting, as spelled out above.

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

(3) That after voting to go into executive session the defendants discussed during the executive session matters other than those subjects included in the motion.

(4) That the defendants intentionally violated some other provision of the OMA.

Members of a governmental body who are named as defendants must serve an initial response to the complaint within seven business days of receiving personal service of

*continued on page 29*

# LEGAL CLEARINGHOUSE

**NOTE:** Legal summaries are provided within this column; however, additional background and/or pertinent information will be added to some of the decisions, thus calling your attention to the summaries we think are particularly significant. We caution you *not* to rely solely on a summary, or any other legal information, found in this column. You should read each case in its entirety for a better understanding.

## ALABAMA COURT DECISIONS

**Courts:** Because the prosecution did not receive proper notice as to when the case would be called for trial, the trial court's dismissal of the case violated the prosecution's right to procedural due process. *State v. Harwell*, --- So.3d ---, 2011 WL 5252754 (Ala.Crim.App.2011)

**Courts:** A Judge's retirement during a pending investigation did not deprive the Judicial Inquiry Commission or Court of the Judiciary of jurisdiction. *Steenland v. Alabama Judicial Inquiry Com'n*, 87 So.3d 535 (Ala.2012)

**Licenses and Business Regulations:** An Emergency 911 service charge applies to prepaid wireless telephone services. A state or local taxing authority may impose a transaction-privilege tax on the interstate activities of a telecommunications provider without violating the Commerce Clause if the imposition of the tax satisfies a four-part test: (1) the taxpayer has a substantial nexus with the city or state; (2) the tax is fairly apportioned; (3) the tax does not discriminate against interstate commerce; and (4) the tax is fairly related to the taxpayer's activities and presence in the city or state. *T-Mobile South, LLC v. Bonet*, 85 So.3d 963 (Ala.2011)

**Sales and Use Taxes:** Peanuts provided in a restaurant were "resold" to customers, and, thus, the restaurant was not liable for use tax based on its purchase of peanuts in bulk, even though the peanuts were not separately listed and priced on the menu or customers' bills. Instead, the restaurant charged customers for the average incremental cost of peanuts as part of the cost of meals. *Alabama Dept. of Revenue v. Logan's Roadhouse, Inc.*, --- So.3d ---, 2011 WL 1820107 (Ala.Civ.App.2011)

**Streets:** A county is not an indispensable party to an easement action involving a private roadway over private land. *Steele v. O'Neal*, 87 So.3d 559 (Ala.Civ.App.2011)

**Tort Liability:** The test for agency is whether the alleged principal has retained a right of control over the actions of the alleged agent. A non-profit corporation that contracted with a state board for registration of architects to administer architecture registration examination was not an agent of the board. Policies and procedures concerning the examination were set by the non-profit's board of directors and/or its members, not by the board, and nothing in the record indicated that the board had any influence, apart from its membership in the non-profit, over the policies and procedures of the non-profit. *McCaughn v. Alabama State Bd. for*

*Registration of Architects*, --- So.3d ---, 2011 WL 118270 (Ala. Civ.App.2011)

## UNITED STATES COURT DECISIONS AFFECTING ALABAMA

**Elections:** A Montana state law providing that a "corporation may not make an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party" violated First Amendment political speech rights. *American Tradition Partnership, Inc. v. Bullock*, --- S.Ct. ---, 2012 WL 2368660 (U.S.2012)

**Equal Protection:** A city that, in transitioning from one system for funding sewer improvement projects to another, chose to forgive all tax assessments still owed under the former system while declining to give a refund to homeowners who already had paid their assessments under the former system in a lump sum, had a rational basis for its distinction and, thus, did not violate the Equal Protection Clause. For classification to satisfy equal protection concerns under a rational basis review, the Constitution does not require the government to draw the perfect line or even to draw a line superior to some other line it might have drawn, it requires only that the line actually drawn be a rational line. *Armour v. City of Indianapolis, Ind.*, --- S.Ct. ---, 2012 WL 1969350 (U.S.2012)

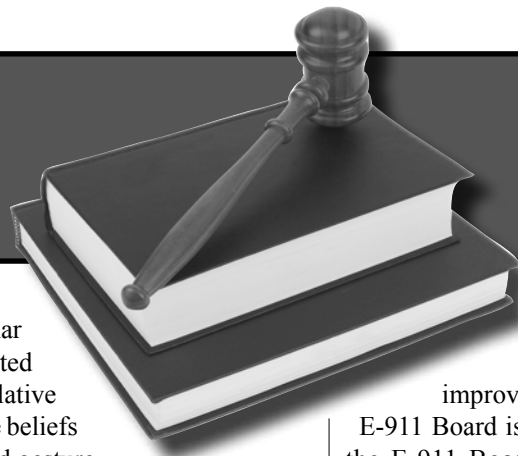
**First Amendment:** Lies about having received military awards may be speech protected by the First Amendment. *U.S. v. Alvarez*, --- S.Ct. ---, 2012 WL 2427808 (U.S.2012)

**Immigration:** Even if a State may make violation of federal law a crime in some instances, it cannot do so in a field, like the field of alien registration, that has been occupied by federal law. Generally, it is not a crime for a removable alien to remain present in the United States. State law is preempted where it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Arizona v. U.S.*, --- S.Ct. ---, 2012 WL 2368661 (U.S.2012)

## DECISIONS FROM OTHER JURISDICTIONS

**Due Process:** Once issued, a license or permit cannot be taken away by a subdivision of the State without due process. A business owner was not required to go through an appeal process set out in the city's zoning ordinance in order to state a cognizable procedural due process claim in a §1983 action challenging the revocation of her zoning permits. Since the owner was deprived of any process at all, revocation constituted a due process violation when it occurred, regardless of any subsequent action that might have resulted from an appeal. *Bowlby v. City of Aberdeen, Miss.*, --- F.3d ---, 2012 WL 1662936 (5<sup>th</sup> Cir.2012)

**First Amendment:** A town's practice of beginning official town council meetings with almost exclusively



Christian prayers endorsed a particular religious viewpoint and thus violated the Establishment Clause. A legislative practice that is inclusive of multiple beliefs and makes clear, in public word and gesture, that the prayers offered are presented by a randomly chosen group of volunteers who do not express an official town religion and do not purport to speak on behalf of all the town's residents or to compel their assent to a particular belief, is fully compatible with the Establishment Clause of the First Amendment. *Galloway v. Town of Greece*, --- F.3d ---, 2012 WL 1732787 (2<sup>nd</sup> Cir.2012)

**Tort Liability:** A plaintiff who brought a §1983 action alleging that a government official retaliated against him, in violation of the First Amendment, for criticizing government officials on his website was entitled to reasonable attorney fees, where the plaintiff succeeded on a significant issue in the litigation, and, by reporting on his website, the plaintiff performed a public service by encouraging transparency and accountability among officials. *Zinna v. Congrove*, --- F.3d ---, 2012 WL 1995066 (10<sup>th</sup> Cir.2012)

#### ATTORNEY GENERAL'S OPINIONS

**Ad Valorem Taxes:** The income of a professional corporation that is owned by the taxpayer should not be considered when determining whether the taxpayer has met the income qualification for the ad valorem tax exemption provided in section 40-9-21 of the Code of Alabama. AGO 2012-062

**Boards:** The Birmingham Racing Commission is authorized to reallocate and disburse the net revenues allocated to the Alabama State Fair Authority from 2003 to the present in accordance with section 11-65-36 of the Code of Alabama. AGO 2012-067

**Conflicts of Interest:** A municipality may not surplus real property belonging to the municipality and exchange said property with a sitting council member's real property. AGO 2012-065

**Courts:** District and municipal courts within Alabama are courts of limited jurisdiction. A district court is without authority to transfer a misdemeanor violation, made by a deputy sheriff or state trooper that cites state law and not a municipal ordinance violation, to a municipal court for subsequent disposition. AGO 2012-063

**Courts:** A district court is authorized to prosecute violations of state law and, in certain instances, municipal law. A district court however will not have jurisdiction over a misdemeanor ordinance violation when a municipal court exists and the violation does not involve a felony. AGO 2012-063

**Courts:** Any municipal ordinance violation that could be enhanced to or involve a felony violation should be charged as a state law violation and not as a municipal ordinance violation. AGO 2012-063

**E-911:** The E-911 Board may provide matching funds to a volunteer fire department to improve the emergency communications system. The

E-911 Board is subject to the Competitive Bid Law. Although the E-911 Board will provide matching funds for a federal grant to a volunteer fire department to improve the emergency communications system, compliance with the Competitive Bid Law in the purchase of equipment using grant funds remains the responsibility of the fire department. AGO 2012-066

**Licenses and Business Regulations:** Because there are no licensure exemptions for official court reporters pursuant to state law, official court reporters are required to be licensed by the Alabama Board of Court Reporting. AGO 2012-064

**Sales Tax:** The sale of admission tickets to the Champions Tour golf tournament, which is conducted as a Champions Tour event by PGA Tour, Inc., is exempt from state, county and municipal sales taxes under section 40-23-5(q) of the Code of Alabama, notwithstanding the incorrect reference in the Code section to "Senior PGA" as "Senior Professional Golfers Association." AGO 2012-061 ■

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# F.A.Q.

Your Frequently Asked (Legal) Questions Answered  
by Assistant General Counsel Rob Johnston



## Open Meetings

**Does the Alabama Open Meetings Act apply to newly elected officials who have not yet taken office?**

Yes. The Alabama Open Meetings Act (OMA) prohibits governmental bodies from holding closed meetings, except under limited circumstances. Section 36-25A-1, Code of Alabama 1975. The OMA was created to establish transparency in government and requires proper notice and that minutes be taken and that the meeting be open to the public. In order for a meeting to occur, a quorum is required. In defining a quorum, the OMA includes newly elected officials when it states “between the date of election of members and the date such members take office, any person elected to serve on a governmental body shall be counted in the determination of whether a quorum of that governmental body is present...” Section 36-25A-2(12), Code of Alabama 1975. Therefore, the OMA applies to meetings held by newly elected officials who have not yet taken office. ■

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the complaint. A preliminary hearing on the complaint must be held no later than 10 business days after the date of the filing of the defendants' initial response to the complaint or, if no response is filed, no later than 17 business days after the filing of the complaint or on the nearest day thereafter as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties.

In the preliminary hearing on the complaint, the plaintiff must establish by a preponderance of the evidence that a meeting of the governmental body occurred and that each defendant attended the meeting. Additionally, to establish a *prima facie* case, the plaintiff must present substantial evidence proving the alleged violation.

If the court finds that the plaintiff has met its initial burden of proof, the court shall establish a schedule for discovery and set the matter for a hearing on the merits. If at the preliminary hearing the plaintiff establishes a *prima facie* case that the defendants discussed matters during the executive session other than those included in the motion to go into the executive session, the burden of proof at the hearing on the merits shifts. The defendants must then prove by a preponderance of the evidence that the discussions during the executive session were limited to matters related to the subjects included in the motion.

During a proceeding involving claims alleging that matters beyond the motion were discussed, the court shall conduct an in-camera (a private hearing) proceeding or adopt another procedure as necessary to protect the confidentiality of the matters discussed. If there is a determination that the executive session was proper, items discussed during the executive session shall not be disclosed or utilized in any other legal proceeding by any individual or attorney who attends the in-camera portion of the proceedings.

Upon proof by a preponderance of the evidence of a violation, the circuit court shall issue an appropriate final order including, if appropriate, a declaratory judgment or injunction. Prior to a final determination of the merits, temporary restraining orders or preliminary injunctions may be issued upon proper motion and proof as provided and required in the Alabama Rules of Civil Procedure. The court must issue a final order on the merits within 60 days after the preliminary hearing unless all parties and the court consent to allow a longer period.

The court may invalidate any action taken during a meeting held in violation of the OMA provided that:

1. The complaint is filed within 21 days of the date when the action is made public,
2. The violation was not the result of mistake, inadvertence, or excusable neglect, and
3. Invalidating the action taken will not unduly prejudice third parties who have changed their position or acted

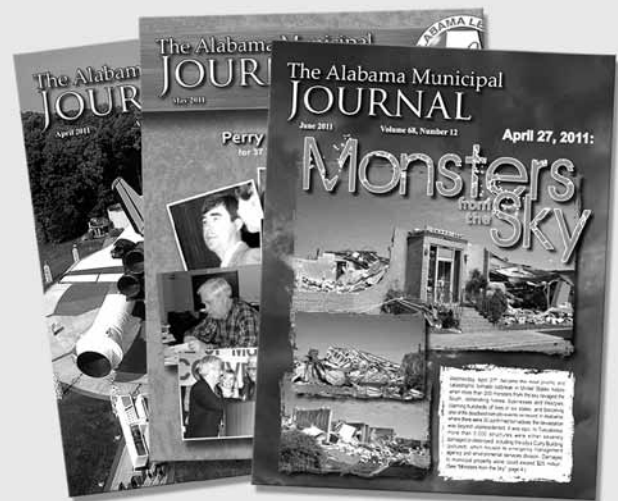
in good faith reliance upon the challenged action of the governmental body.

No action taken at an open meeting conducted in a manner consistent with the OMA shall be invalidated because of a violation that took place prior to the meeting. A final order issued against a defendant shall state specifically upon which claim or claims the ruling is based. For each meeting proven to be held in violation of the OMA, the court must impose a civil penalty up to one thousand dollars (\$1,000) or one half of the defendant's monthly salary for serving on the governmental body, whichever is less. If the claim relates to improper discussions during executive sessions, monetary penalties may only be assessed against members of the governmental body who voted to go into the executive session and who remained in the executive session during the improper discussion. See Section 36-25A-9(g), Code of Alabama 1975.

Penalties imposed against a member of a governmental body found to have acted in violation of this act shall not be paid by nor reimbursed to the member by the governmental body he or she serves. However, a governmental body is authorized to pay for or provide for the legal expenses of present or former members of the body named as defendants in any action alleging a violation of the OMA. Section 36-25A-9(h), Code of Alabama 1975. ■

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# Records and Archives Management: What You Need to Know

by Abby Luker • Communications Intern • ALM

**A**s scrutiny of governmental institutions increases in regards to their ability to operate efficiently while providing adequate services so, too, does the importance of government accountability, placing greater emphasis on proper records and archives management.

Unfortunately, municipal records and archives management programs are all too often neglected or even nonexistent due to a lack of funding or training, making the execution or creation of such a program a daunting task. However, outside expert resources do exist. The Alabama Department of History and Archives and the aid of its knowledgeable employees can help simplify the management of municipal records and archives. Local government records archivist Tom Turley, who has now served the department for more than 21 years, is an expert in this field.

Turley, who received his Ph.D. at Vanderbilt University and worked for the Tennessee State Archives and later the National Archives, was recruited by the Alabama Department of Archives and History in the early '90s to work on the Alabama Newspaper Project – an ambitious undertaking through which historical state newspapers were microfilmed. Turley has been with the Department since and is, to say the least, a wealth of knowledge when it comes to managing and archiving municipal records.

“The best thing is just to be aware that we’re here and can help and to try and get help when they need it,” Turley said of the assistance available through the Department.

“For a lot of local governments, they just don’t have the money or, in some cases, possibly the training to take care of records, and even though we can’t give them money, we can give them advice and assistance,” he said. “So, I travel around sometimes to local governments meeting with

officials or maybe even helping them go through storage areas and identifying records that they can get rid of or giving them advice on climate control and proper boxes and file folders.

“A lot of times, records are pretty low on the agenda for local government because once the records are out of their offices and then stored some place, it’s easy to forget about them. They don’t have, in most cases, records officers or people who are really trained in records management or much money to spend on things like that.”

As government continues to embrace technology, Turley encourages municipal employees and those in records



*Tom Turley, Alabama Department of Archives and History*

management to become familiar with the various digital options. “Like it or not, that’s where record keeping is going,” Turley said. “Twenty years from now or 50 years from now, paper records may no longer exist except in archives.”

Unfortunately, managing records electronically can prove to be more costly and cumbersome, despite its time- and space-saving abilities. Just like paper records, electronic storage formats must be kept in a stable environment to ensure that the record keeping system does not fail and the records are not lost.

“If they are going to keep records strictly in electronic format, they need to be very careful about having some kind of a stable backup,” Turley said. “You can keep the original paper records, but, of course, that defeats part of the purpose because they want to be able to get rid of the paper – but if not paper, then microfilm if it’s still available or whatever kind of digital backup storage medium that’s considered to be the safest thing at the time. First it was floppy disks and then CDs or DVDs. Now people are starting to keep records on portable hard drives or using online storage or something similar to that.

“So, when you’re in a digital environment, you just have to be sure that you are maintaining a backup because one wrong keystroke and you can lose all your records in the system if they’re not backed up.”

However, much like a typical storage building containing paper files, electronic storage systems can easily become bogged, which is why Turley advises municipal employees to study the Records Disposition Authority, which can be found online at [www.archives.alabama.gov/officials/rdas/local/munRDA.pdf](http://www.archives.alabama.gov/officials/rdas/local/munRDA.pdf). Drafted by employees in the Department of History and Archives and approved by the Records Commission, the Records Disposition Authority contains laws regarding the management of records and archives, stating which are permanent or temporary and for how long temporary records must be kept.

Although adhering to the various retention schedules for multiple temporary records can be arduous, organizing and labeling records can make for a more streamlined process when the time arrives for destruction notices to be sent and temporary files to be destroyed. According to Turley, all municipal officials and employees, not just those overseeing records and archives, can play a role in the organization and filing of records and how efficient their municipalities’ records and archives program can be by labeling their individual computer files in a way that gives a clue to what each file contains; when each file was created; and how long each file should be kept.

“If they [officials/employees] can learn basically about dividing the records they need to keep long-term from those that they don’t and actually working that into their filing system so that the records are kept that way from the time they’re created, then it’s a lot easier to keep track of things than it is to have to go through a basement full of stuff that includes both important records and unimportant records or an email system that has 10,000 emails in it of which maybe 300 are worth keeping long-term,” he said.

Turley encourages employees and officials not to neglect their email and/or social media accounts through which they discuss or solve work-related matters. “That’s something that we have a lot of trouble convincing people of in the context

of email because people tend to look at email as just being email, you know, it doesn’t matter what it is, it’s all email, and it’s just something that’s just very ephemeral,” Turley said. “And on the computer screen, they think it doesn’t have any significance. But an email message can be everything from you asking one of your coworkers, ‘Do you want to go to lunch today?’ to a city councilmember discussing a policy issue with the mayor... And then what we need to do is look at the email in terms of what information is actually in it, and if it’s something like a policy issue, then it’s a permanent record. If it’s just a note about two people going to lunch, then that doesn’t have any record value at all, and you can destroy that immediately.”

It is essential for municipal officials and employees to know that in records management it is not the format in which municipal-related information is delivered – be it a radio or TV commercial, a press release, a Facebook or Twitter message, or an email – but the information itself that will determine whether it has permanent, temporary or even any archival value.

To learn more about maintaining and archiving municipal records, contact Tom Turley with the Alabama Department of History and Archives at (334) 353-4607 or at [Tom.Turley@archives.alabama.gov](mailto:Tom.Turley@archives.alabama.gov) or visit the Department’s website at [www.archives.alabama.gov](http://www.archives.alabama.gov). ■

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## PPE and safety procedures save lives.

Were it not for Fairhope's required use of fire retardant (FR) clothing and personal protective equipment (PPE), thorough written safety procedures and regular in-house safety training, Greg's unfortunate experience could have ended very badly. Instead, by following the strict safety protocol, Greg was safely removed from his bucket, cut from his harness and stabilized for the arrival of paramedics. Thanks to his PPE, the injuries he sustained from the high voltage electric shock were not life threatening.

According to Scott, Fairhope supplies and requires line workers to wear:

- Industry standard, nonconductive hardhats
- Impact-resistant safety glasses with side protection
- Rubber gloves if working with energized lines; leather gloves if cutting rope
- Fire-retardant clothing – long sleeves/long pants – with a hazard rating category 2 (HRC2)
- Fire-retardant outer wear, such as rain suits and winter wear
- Rubber-soled, full leather boots
- Five-point, fire-retardant, fall-protection safety harness for all bucket work that is then clipped to the boom



*Lineman Greg McCoy and Electric Superintendent Scott Sligh with the remains of the FR shirt Greg was wearing Dec. 15th.*

In addition, employees attend a series of training on bucket and truck safety procedures as well as bucket and pole-top rescue training – which proved to be invaluable in Greg's situation. Boom trucks, fiberglass sticks and gloves are periodically dielectrically tested to make certain they're fully intact and safe, and a tailgate analysis is performed each morning, or if conditions change, to identify hazards and ensure the proper safety equipment is being used. Employees are also First Aid/CPR trained.

Scott stressed that *all* utility departments should invest in necessary PPE and then require their employees to use it. "The most important thing you can do at the end of the day is go home with all your fingers and toes," he said.

Mayor Tim Kant is also a proponent of strict safety protocol. "City of Fairhope employees do not take for granted the dangers of their jobs," he said. "The outcome of this situation could have ended much differently, and we are very fortunate Greg McCoy was wearing his equipment and has made a full recovery. The implementation of safety procedures and policies has proven to save lives and will help us prevent accidents in the future."

## Lessons Learned.

Even though he has no clear memories of the accident, Greg has a crystal clear message: "Follow the safety procedures and wear your PPE," he said. "I've heard some guys say they don't want to wear their glasses because sweat gets in their eyes. Imagine what would have happened if I hadn't been wearing mine. FR and PPE work. I'm thankful for it."

Doug said once you witness an event such as what happened to Greg, you're happy to put the PPE on every morning. "The guys out there who do not want to wear the safety equipment need to quit this line of work and do something else – for themselves, their families and their employers," he said. "If I want to go home at the end of the day and see my wife, my son and my daughter, it's worth it."

Thanks to Fairhope's strict safety protocol, Greg was a survivor rather than a fatality. ■

**Author's Note:** *Every day, linemen literally risk life and limb to maintain one of our most valuable resources: electricity. Linemen understand the inherent hazards associated with their profession, yet they're willing to go through the training and don the equipment so our society will be more productive and comfortable. We complain profusely if we're inconvenienced by a power outage; however, we rarely consider the dangers associated with maintaining that convenience. Greg McCoy and his colleagues are heroes. I sincerely thank Greg for sharing his incredible story with me. Most of all, I thank him for returning to a job that is extremely important and necessary – even though we rarely say thank you for the effort.*

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