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March/April 2015

Volume 72, Number 5

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The Alabama Municipal JOURNAL

Official Publication, Alabama League of Municipalities

March/April 2015 • Volume 72, Number 5

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The Alabama Municipal Journal is published six times a year by the Alabama League of Municipalities, 535 Adams Avenue, Montgomery, Alabama 36104.

Telephone (334) 262-2566. Website: www.alalm.org.

Subscriptions are \$24.00 per year. Advertising rates and circulation statement available at www.alalm.org or by calling the above number. Statements or expressions of opinions appearing within this publication are those of the authors and not necessarily those of the Alabama League of Municipalities. Publication of any advertisement should not be considered an endorsement of the product or service involved. Material from this publication may not be reprinted without permission.

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On the Cover:

The 2015 Regular Session begins March 3rd. This *Journal* issue explores legislative advocacy, building relationships, legislative goals as well as the League's annual CMO Legislative Advocacy Session scheduled for April 7th in downtown Montgomery. (Be sure to register ASAP. Space is limited.)

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BIG PICTURE

Municipal employees should be protected for doing their jobs – the **SAME** as state and education personnel!

In recent years lawsuits have exposed municipal employees to personal liability, even where they are acting in good faith, solely in the line and scope of their duties and responsibilities.

Adding insult to injury, some judges in the state are actually finding for the plaintiff in these “personal” capacity suits, even though the plaintiff and judges agree that the employee is simply performing his/her job.

If the same protections that exist for municipalities don’t exist for municipal employees acting within the line and scope of their employment, municipal employees may be facing personal liability which may not be covered by insurance.



In 2014 the Alabama Legislature passed Act 2014-124 providing immunity under certain circumstances for public employees of the state as well as all education employees, state and local, who are sued in their personal capacity for actions taken while acting within the line and scope of their public jobs.

The Alabama League of Municipalities is actively pursuing legislation to provide that the same protections afforded to state and education employees sued in their personal capacity apply to municipal employees so there are no separate classes of public employees – those who are protected and those who are not.

Passage of this legislation specifically protecting municipal employees who are sued in their personal capacity when acting within the line and scope of their employment is a critical issue for municipal government and municipal employees because, ultimately, the quality of life for every Alabama citizen is affected by the municipal employees who serve them.

Ultimately, the quality of life for every Alabama citizen is affected by the municipal employees who serve them.

The President's Report

By Mayor Wally Burns, Southside



Legislative Advocacy Begins at Home

Theodore Roosevelt once said, “A typical vice of American politics is the avoidance of saying anything on real issues.”

As we navigate this year’s legislative session, I believe it is important for municipal officials to understand they **CAN** make a difference in the laws and revisions that potentially affect the cities and communities we serve. We cannot blame others if we – municipal officials elected by *our* constituents to serve *our* communities – don’t do our part to protect the interests of our citizens and the quality of life of our communities. Due to tremendous statewide fiscal challenges, this will be a very intense legislative session – and we certainly don’t need to lose any of our powers to govern at the local level as state officials struggle with finding additional funds.

Perhaps one of the most vital duties of a city official is to be actively involved in the legislative process. Each year, hundreds of bills are introduced in the Legislature. Many of these directly affect our municipalities. In order to be an effective leader, we must be involved, be knowledgeable and be well versed. We cannot assume state lawmakers understand the impact of every bill and how it will affect local government. Other groups are also contacting our legislators and some of these groups are not concerned with how a particular bill may affect our cities and towns.

To make an impact on the decision making process, local officials must know how the process works and stand ready to explain to our legislative delegations the consequences specific legislation will have – both positive and negative – on the cities and towns where we live. Municipal officials are the driving force behind

legislative success. With a unified effort, municipal officials can make a difference by developing relationships with their legislators.

Each year when the Legislature meets, critical decisions are made. Our elected representatives will determine which laws and policies best serve our communities. They rely heavily on the input from many different sources. To make a difference in the legislative process, we must develop a relationship with our legislators. It is unlikely we will agree on every issue, but a positive relationship can be built on the common ground we share – the best interest of our cities and our state.

Throughout the legislative session, our League keeps us informed about issues that will affect our communities. It is incumbent upon us to respond when our help is needed with our local legislators. It is our duty. Local voices have more influence on our legislators than special interest groups. Our League does a great job working for us, but the League’s efforts carry more impact when they have our support back home. Please be sure you’ve subscribed to *State House Advocate*, the League’s weekly e-newsletter that’s sent on Monday afternoons during the Session, so you will know when you are needed on an important issue – and always have your local delegation’s contact information handy! Also, please be sure to register for the League’s April 7th Legislative Advocacy CMO Session in Montgomery and plan to visit with your legislative leaders that afternoon. The larger the crowd, the louder the voice, the greater our impact.

Please remember: we can make a difference if we work together for the betterment of our communities that we love so dearly. ■

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Municipal Overview

By Ken Smith, Executive Director



Top 10 Reasons Not to Attend the League's 2015 Annual Convention

Reason Number 10: *I know everything and everyone I need to know to do my job.* Wow. Few of us can make that claim, but I certainly understand why you don't need to attend the Convention. Would you please do me a favor, though? Call me and I'll put you on the program. In fact, call me and you can be the whole program.

Reason Number 9: *I don't have the time to attend the Convention.* But you have time to deal with the consequences of making a bad decision in your elected role? Give us four days and we'll most likely save you four weeks.

Reason Number 8: *I don't like meeting new people and learning new things.* Learning will happen whether you want it to or not. You can either attend a training session so you can be better prepared when something happens, or you can learn on the job. The choice is yours. With over 1,000 of your fellow officials and employees attending the Convention, you'll be hard-pressed to avoid striking up a conversation with someone new. Odd thing about that, though – you might meet someone you actually like, and who can help you do your job better. Isn't it worth the risk?

Reason Number 7: *I don't need to learn the latest information. We've always done things the same way and it works for us.* Hear that? It's the sound of your fax machine stuck in 1995. Why should you change your procedures just because Congress or the Legislature or some court somewhere has changed the rules on you? It's much better to stay in the dark about these things – especially since doing things the way you always have means you'll always be successful. Or stuck in 1995.

Reason Number 6: *Conventions are nothing but a boondoggle.* That's a mouthful. I even had to look it up to be sure what it meant. A boondoggle is "a wasteful or impractical activity or project usually paid for with public money." Is it impractical to attend training sessions conducted by your peers and recognized experts on topics designed to make your municipality more efficient and effective? Or talk to vendors about services or products that can make your life easier? Who wants life to be easy?

Reason Number 5: *The Convention is just an excuse to have fun.* You've got me on that one. The League has somehow even managed to sneak in *hidden fun*: some attendees have actually acknowledged enjoying our training sessions. Just how sneaky is that? You might even discover other individuals who find serving the public fun because it's rewarding and enjoyable. You wouldn't want that attitude to rub off on you.

Reason Number 4: *The Expo Hall is too confusing. I never know who to talk to!* The Expo Hall at the League's Convention is huge. There's just no way around that. You could spend hours browsing through the Expo Hall, window shopping for solutions to your local problems. However! We've provided you with a very special PASSPORT to help you with this process. Trust me. It's an adventure well worth having. Of course, I hope you'll spend a little time browsing among all the vendors, as well as state and local expo booths. You may find just the solution you need.

Reason Number 3: *I'm comfortable in my routine. The Convention gets me out of my rut.* Doesn't everyone love their rut? We know what to expect each day. We know the people we're likely to see, the problems that are likely to arise. We know how to respond. Staying in that rut is the ultimate in contentment, right? That's why you show up for work each day with a smile on your face and a song in your heart.

Reason Number 2: *Sessions at the Convention are designed only to help small municipalities/Sessions at the Convention are designed only to help large municipalities.* Yes. Exactly. Now we're seeing things the same way.

Reason Number 1: *I'm an Auburn fan. I don't want to go to Tuscaloosa.* Well, at least this is a legitimate concern. You wouldn't want to be infected with Crimson Tide cooties. Why tempt fate by visiting the enemy camp? You might actually find yourself enjoying your time in Tuscaloosa. You may even want to return. After all, Auburn has had some past successes in Tuscaloosa.

Are there any reasons why I should attend this year's League Convention?

I thought you'd NEVER ask! This is the first time the League Convention has been held in Tuscaloosa since 1961. We're excited about our return to Tuscaloosa and know that it will be an outstanding and memorable Convention. Here's an overview of what to expect. And don't forget – information on the Convention is also posted on our website at alm.org. Visit often for updates.

Let's start at the end – you *do not* want to miss this year's Tuesday morning Closing General Session. We're proud to announce that Coach Nick Saban, head football coach for the Alabama Crimson Tide, has agreed to speak to our members at this session. Coach Saban is recognized as a dynamic and inspiring motivational speaker and his success has clearly been demonstrated as a leader of young men both on and off of the football field. It's an honor to have him speak to our attendees.

This same event will also feature a new presentation by Joyce E. Brooks, the outstanding speaker whose keynote address closed the Convention last year in Mobile. Ms. Brooks' presentation left our members wanting to hear more and we're excited to announce that she will again bring her authentic approach and unbridled enthusiasm to help us wrap up four days in Tuscaloosa with new insights and a belly laugh or two.

Governor Robert Bentley has been invited to speak at the Opening Session. While the Convention will take place during the 2015 Regular Legislative Session, we're hopeful that the Governor will be able to join us for this session on Saturday morning. We always enjoy hearing what the Governor has to say.

The League staff has been working hard to select topics, speakers and venues that will make this a stimulating Convention. The following topics are tentatively set for Sunday afternoon concurrent session training:

- What Community Development Programs Can Do For Your Municipality – An Overview of Design Alabama, Alabama Communities of Excellence (ACE), Your Town and Main Street
- What to Do When the SEC Calls – Compliance with the Municipalities Continuing Disclosure Cooperation Initiative
- Grants 101 - How to Acquire Federal Funding for Local Projects
- How to Attract and Retain Retail Businesses
- Handling Police and Public Interaction in a Post-Ferguson Environment

- Housing and Housing Authorities
- Council/Manager Workshop

I'm confident you will find something to benefit you and your community among these topics.

By far the most popular sessions at the Convention each year are the Population-Based Roundtable Discussion Groups, which provide attendees with an opportunity to share information with their peers and colleagues from similarly-sized municipalities. These sessions will be held Monday morning and afternoon this year, with a brief break for a quick lunch.

Our attendees also benefit from the time they can share with the vendors in the Expo Hall. This year, the Sunday night Expo Reception will provide you with a chance to meet these vendors. You also have an opportunity Monday morning, during a meet-and-greet breakfast in the Expo Hall. Of course, you don't want to miss the opportunity to participate in our popular Passport Prize Program. Visit the vendors listed on your Passport, get your Passport stamped and turn it in at Expo Central for a chance to win great prizes at the end of the Closing Session Tuesday morning.

I would be remiss if I didn't point out that this year's Expo Hall will be held in the University of Alabama's Hank Crisp Indoor Practice Facility. This unique setting will provide attendees with a rare glimpse inside the athletic facility used by Crimson Tide athletes. Another event will also be held in an unusual setting – the Monday night President's Banquet will be held at Coleman Coliseum. We're also looking forward to the City of Tuscaloosa's Welcome Reception Saturday evening that is scheduled to be held at the Tuscaloosa Amphitheater. This outdoor venue provides a great setting for concerts and other events. The City of Tuscaloosa is planning a Saturday night dessert reception to give attendees time to enjoy the local flavors of Tuscaloosa on their own, then spend some time together for some after-dinner sweet treats.

One significant element of the Convention that should not be overlooked is the review and adoption of the League's Policies and Goals. This important document defines the League's core principles and positions and guides our efforts in working with the Alabama Legislature and state and federal agencies. It is vital that our members voice their views on these documents so that we can be sure that it reflects the opinions and stances of the majority of our members. The key sessions at the Convention involved in the discussion and development of the Policies and Goals are the Resolutions Committee meeting Saturday morning, and the Annual Business Session Monday afternoon. Municipalities must select a delegate to attend the Business Session and vote on these issues. League Officers for the year are also selected

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for the Alabama League of Municipalities

2015 ANNUAL CONVENTION

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Photo courtesy of Tuscaloosa Tourism and Sports Commission



Photo courtesy of Tuscaloosa Tourism and Sports Commission



Photo by Elmore DeMott

Online registration continues through April 24, 2015

Pre-registration discounts expire April 10, 2015! For more information, go to our website: www.alalm.org

during the Business Session. I encourage you to participate in these programs.

Tuesday morning, our attorneys will answer your questions during the Ask Your Attorney Session. This is an opportunity to have your questions directly addressed by the League's staff of four attorneys, as well as a couple of visiting attorneys. If you can get the same conclusion from that many attorneys, you can probably rely on the response!

The list goes on and on. I haven't even mentioned the chance for networking you'll have between sessions. As stated above, the Convention is so jam-packed with learning opportunities, you can't help but walk away better informed than when you arrived. And talk about getting out of a rut – the opportunity to see these locations from a unique perspective and observe how they were transformed for these unusual uses alone should entice you to attend the Convention. The League is extremely grateful to the City of Tuscaloosa and the University of Alabama for welcoming our attendees to Tuscaloosa and allowing us to use these facilities.

Here's to an informative and fun League Convention – where you will have many opportunities to grow professionally and personally. I hope to see you there! ■

Are you following the League on Facebook?

As our base grows, Facebook will be another outlet for the League to provide timely information about upcoming CMO sessions, conferences, annual convention and ALM's legislative endeavors. We'll also be posting pictures so be sure to "like" us.

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The Legal Viewpoint

By Lori Lein, General Counsel



Executive Sessions – Getting Them Right

More often than we'd like in the legal department, a call comes in that goes something like this: "This is Mayor Greene, I've just called for an executive session meeting for tomorrow night to discuss an employee's bad attitude. I really want the clerk to be in the meeting to take minutes but she tells me that the League says she shouldn't attend and there should never be minutes of an executive session. Is that true?" While I wish the simple answer to the question could be "yes, your clerk is absolutely right (as they often are)," many troubling issues arise with the scenario presented above warranting further discussion beyond the actual question asked by the mayor.

Before we break down this hypothetical question and discuss proper executive sessions under Alabama Law, it is important to start with the understanding that the Open Meetings Act (OMA) specifically states that executive sessions are not required for any reason. Section 36-25A-7(a). A city council is never, under any circumstances, required to hold an executive session. In fact, 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 a legally called open public meeting. This immunity is in addition to all others that may apply. See Section 36-25A-8, Code of Alabama 1975.

But let's face it, there are times when a closed door discussion may be necessary and prudent. An executive session – sometimes called a closed meeting or an in camera session – is a useful tool for handling issues that are best discussed in private and can foster robust, candid and, hopefully, confidential discourse. Thankfully the OMA recognizes reasons why a city council can go into executive session. But before we get to that, let's get back to Mayor Greene calling for an executive session and the other issues his scenario raises.

First, the law does not allow for the mayor or presiding officer to call for an executive session meeting. A council can only go into an executive session from a legally convened regular or special called meeting which has been properly noticed to the public under the OMA. 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. This procedure must be followed in order to comply with the OMA (s):

(1) A quorum of the 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, must be recorded in the minutes.

(4) Prior to calling the executive session to order, the presiding officer must state whether the governmental body will reconvene after the executive session and, if so, the approximate time the body expects to reconvene.

Stated another way, in order to go into executive session, the council must be in a properly noticed meeting, a member must make a motion, it needs a second and is debatable. Before voting, an oral or written declaration stating the reason for the executive session must be presented. It takes a majority vote to adopt the motion and go into executive session. The minutes might state something like the following:

"Attorney Lein advised the city council that it would be appropriate to go into executive session to discuss matters relating pending litigation. Councilmember Jones moved to go into executive session to consult with the city attorney. The motion was seconded by Councilmember Hill. There was no debate or discussion. The council voted as follows to go into executive session:

| | |
|-----------------------|-----|
| Mayor Greene - | yea |
| Councilmember Jones - | yea |
| Councilmember Hill - | yea |

- Councilmember Mims - yea
- Councilmember Pratt - yea
- Councilmember Speaks - nay

Before moving into executive session the presiding officer notified those in attendance that they expected to be in executive session approximately 30 minutes. The executive session began at 10:15 a.m. and ended at approximately 10:45 a.m.”.

The next issue presented by my hypothetical question from Mayor Greene involves the reasons for going into executive session. Unlike the old Sunshine Law, the OMA provides a number of scenarios where a city council may go into executive session. Arguably, an employee’s bad attitude, alone, is not one of them. The reasons for an executive session are listed in Section 36-25A-7(a), Code of Alabama 1975. A council can only go into executive session in the following circumstances:

(1) GOOD NAME & CHARACTER: 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 the 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

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▶ Aerial
▶ Rescue
▶ Tanker
▶ Quick Attack



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Hall of Fame but only those portions of the meeting that involve general reputation and character may be discussed in executive session. AGO 2010-011

(2) **DISCIPLINE OR DISMISSAL UNDER CERTAIN CIRCUMSTANCES:** 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) **CERTAIN DISCUSSIONS WITH LEGAL COUNSEL:** 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) **SECURITY ISSUES:** 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) **UNDERCOVER LAW ENFORCEMENT:** 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 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 that the discussions would imperil effective law enforcement if disclosed outside of an executive session.

(6) **PRELIMINARY REAL ESTATE DISCUSSIONS:** 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) **CERTAIN ECONOMIC DEVELOPMENT DISCUSSIONS:** 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 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) **CERTAIN LABOR NEGOTIATIONS:** 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) **QUASI-JUDICIAL PROCEEDINGS:** To deliberate and discuss evidence or testimony presented during a public or contested case hearing and vote upon the outcome of the proceeding or hearing if the governmental body is acting in the capacity of a quasi-judicial body, and either votes upon

its decision in an open meeting or issues a written decision which may be appealed to a hearing officer, an administrative board, court, or other body which has the authority to conduct a hearing or appeal of the matter which is open to the public.

These nine reasons are the only legal reasons allowed for holding an executive session under Alabama Law. Please note that many of these require a written or oral statement on recorded on the minutes before going into executive session.

The third point of discussion regarding Mayor Greene's hypothetical question is who can and should attend an executive session. The League advises that only those persons who are absolutely needed for the discussion held in the executive session should attend. Often this only includes the members of the governing body. If asked the question, we advise that the city clerk should not attend an executive session and there are no minutes for the executive session.

Finally, another question we get in the legal department about executive sessions is "what, if anything, can be done about a council member who leaves an executive session and then goes and tells a reporter or citizen what took place in the executive session?" Clearly one of the reasons for going into executive session is to foster candid discussions and there is a sense that what goes on in executive session is confidential in nature. But the law does not prohibit someone

from sharing with others what went on behind closed doors. While it can be awkward, embarrassing, and in some cases show a lack of judgment, a council member in attendance at an executive session is not prohibited from coming out of the executive session and sharing what went on in the executive session. Mayors and councilmembers who attend an executive session need to keep in mind that if a claim is made relating to improper discussions during executive sessions, monetary penalties may 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.

In conclusion, while there is little question that an executive session can be a useful tool for city councils to handle sensitive issues not warranting a full public discussion, they must be conducted properly and only when absolutely necessary. It is important that all members of the city council understand when executive sessions are proper and how they are legally conducted. This article should be kept on hand and used as a resource whenever the city council is considering the need for an executive session. For further questions, please contact the League Legal Department. ■

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Outlook for 2015 Regular Legislative Session

Greg Cochran

Director of Intergovernmental Relations • ALM



The 2015 Regular Session of the Alabama Legislature opens Tuesday, March 3rd with several new faces. Eight of the 35-member Senate are new and the House of Representatives has 25 new members in its 105-member body. These freshmen state lawmakers are entering the process at a very interesting time in Alabama's history. The 2015 Regular Session will bring many challenges and opportunities – not only for these new members but for our municipal governments. The State General Fund is facing historical deficits and is in desperate need of additional resources to address the skyrocketing operating costs of Medicaid and prisons, as well as funding for transportation infrastructure, retirement benefits and enhancing Alabama's economic incentives packages.

The Legislature is looking under every rock and in every cranny as they struggle to fill an expanding void with shrinking resources. Do they eliminate the federal deductions from state income tax filers? Increase the state gasoline tax? Raid the State Oil and Gas Trust Fund? Increase the state sales tax rate? Whatever stopgaps they pursue, the likelihood is very high that municipalities could be part of the fallout if we're not vigilant. Advocacy on behalf of our cities and towns matters now more than ever.

Meanwhile, the League's Committee on State and Federal Legislation convened in November and supported six municipal initiatives for passage during the 2015 Regular Session ranging from employee liability protections to election revisions to the impact of the payday loan industry in our communities. This, of course, will require significant effort by the League's leadership, our members and our staff. The League needs you to be engaged in the legislative process by reaching out to the members of your legislative delegation and seeking their commitment to proactively support these legislative initiatives. Additionally, please encourage your representatives to seek your position on any legislative issues affecting municipal government that arise during the Session.

2015 Legislative Package

Employee Liability Protection. The League will seek legislation to clarify the status of municipal employee liability protection under the tort laws of the State of Alabama to ensure that municipal employees are protected under the same civil liability protections provided to state and education employees. (*For additional information, see page 4.*)

Mayoral Vacancies in Certain Class 7 or 8 Municipalities. Section 11-44G-2, Code of Ala. 1975, provides a procedure to be used in Class 7 or 8 municipalities for filling a vacancy in the office of mayor. Another statute provides that the council president in cities of 12,000 or more inhabitants shall automatically become mayor under the death or resignation of the mayor. Over the years, the population of some Class 7 or 8 municipalities has increased to 12,000 or more. These cities are faced with conflicting statutes and have no guidance as to the procedures they should use to fill mayoral vacancies. This bill proposes to amend Section 11-44G-2 to allow the council president to fill the vacancy in Class 7 or 8 cities with populations of 12,000 or more.

Municipal Election Law Revisions. Following each municipal election cycle, the League discovers areas of municipal election laws which need amending. The League supports several technical amendments to the municipal elections laws.

Island Annexation. Many of our municipalities have land entirely within their jurisdictional boundaries that has not been annexed into the municipality. These municipalities need a process in which they can annex these properties into their municipality. This proposed legislation would be a procedure that a municipality could use to annex the unincorporated property.

Appropriation for Wastewater Treatment SRF and the Alabama Drinking Water Finance Authority. Many years ago, the Alabama Legislature established a State Revolving Loan Fund for Wastewater Treatment (SRF) and the Alabama Drinking Water Finance Authority to match state funds with federal dollars for low interest loans to governmental entities for wastewater treatment and drinking water projects. Each year, the League seeks additional matching funds from the Legislature to continue these nationally recognized programs.

Payday Loan Industry Revisions. The League will work with other interested parties in pursuing revisions to the laws and regulations overseeing the payday loan industry. The League's goal is to participate in the development and passage of revised laws that are fair and balanced in weighing the needs of consumers and the industry with the needs of municipalities.

continued next page

Conclusion

This is going to be a very intense Regular Session. Not only will we attempt to pass legislation vital to our cities and towns, significant mobilization will be required to *defend* our local governments from unfunded mandates, funding cuts for critical services and any number of legislative efforts that would negatively impact the quality of life for our citizens. Municipal officials bear the brunt of this burden because you are the leaders closest to your communities. You will be held accountable by your constituents; therefore, you must be active in the legislative process.

Please join us in Montgomery on April 7th for the League's annual Municipal Legislative Advocacy CMO. This is an excellent opportunity for you to visit with your legislative delegation in their Montgomery offices so be sure to call and set up afternoon appointments with your House and Senate members. See page 25 for contact information as well as the day's agenda and visit our website at alalm.org to register. In addition, if you have not subscribed to our weekly legislative e-newsletter, *State House Advocate*, you can do that very quickly through the designated link at the top left of the homepage of our website. *State House Advocate* is sent every Monday afternoon during the Session and will provide you with updates as well as any necessary action alerts. This is how we communicate with you during the Session so please subscribe to ensure that you're always part of the process. Of course, feel free to call (334-546-9092) or email (gregc@alalm.org) me with your questions and concerns. ■

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Subscribe to the League's weekly e-newsletters – *This Week* and the *State House Advocate*. The *State House Advocate* is distributed on Monday afternoons during the Session and contains legislative alerts and information about the upcoming legislative week as well as links to bills, status reports and important legislative websites.

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Legislative Primer

by Lori Lein, General Counsel, Alabama League of Municipalities



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

Whether this is your first term in municipal office or you've been in office for multiple terms, it is extremely important to have a good, basic understanding of the legislative process in Alabama. This article briefly explains the workings of the Alabama Legislature and how legislation is passed by that body.

Constitutional Provisions

Article IV of the Alabama Constitution of 1901 (Sections 44 through 111) establishes the legislative department of state government. Section 44 states that the legislative power of the state shall be vested in a legislature composed of a Senate and a House of Representatives. Section 44 has been construed by the Alabama Supreme Court to give plenary power to the state legislature. *State v. Lane*, 181 Ala. 646, 62 So. 31 (1913).

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

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

Composition of the House and the Senate

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



Alabama's Capitol, downtown Montgomery.

Qualifications of Legislators

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

Section 60 of the Alabama Constitution of 1901 states that no person convicted of embezzlement of public money, bribery, perjury or other infamous crimes is eligible for membership in the state legislature.

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

Election and Terms of Members

Members of the House and the Senate are elected, for four-year terms, on the first Tuesday after the first Monday in November in the even years which are not leap years. Their terms begin on the day following their election. Their terms expire on the day after the election of their successors



four years later. Section 46, Alabama Constitution of 1901. Amendment 57 to the Alabama Constitution of 1901 provides that each house shall judge the qualifications of its members.

Organizational Session

The state legislature meets in Organizational Session on the second Tuesday in January following the election of members. The only business that may be transacted at such a session is the organization of the legislature for the ensuing four years, the election of House and Senate officers, the appointment of standing and interim committees, the canvassing of election returns and the determination of contested elections.

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

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

Pursuant to Section 53 of the Alabama Constitution of 1901, the House and the Senate adopt rules of procedure for the next four years.

Legislative Committees

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

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

Length of Sessions

Amendment 339 to the Alabama Constitution of 1901 requires the state legislature to meet in annual regular sessions. Each regular session is limited to 30 legislative days within 105 calendar days. Each special session called by the Governor is limited to 12 legislative days within 30 calendar days.

A legislative day is a day on which either house of the legislature is actually in session. Normally, the legislature

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Relationships Matter for Effective Grass Roots Advocacy & Legislative Success

Greg Cochran

Director of Intergovernmental Relations • ALM

The 2015 legislative session begins March 3rd – meaning it’s now time for you, as a locally elected official representing the citizens of your community, to reach out to those state legislators who also represent your constituents. **Your** relationships with your legislators will be extremely important to the success of your League during the 2015 Regular Session.

Relationships matter.

It’s no surprise that the vital relationships between local and state officials start at home – in church and at the grocery store; at sporting events and the post office; and in offices, restaurants and community events throughout the state. After all, you represent the same people, the same region. You share similar goals for your communities. Successfully achieving those goals is often a direct product of teamwork – and a team cannot be effective unless the relationship between all the members is dynamic and resilient. In all situations, *relationships matter*.

Relationships are the bridge to success in grass roots advocacy and legislative achievements. Once your relationships are in place, *use them*. Keep your legislators on task. Make sure they *understand* the effects of legislation on your municipality and your constituents. Remind them that your constituents are also *their* constituents. Hold them *accountable* for what they do and how they vote. *Relationships matter*.

The ALM staff is a team fused together by many years of professional experience and a strong, interactive relationship. This becomes readily apparent each legislative session as we work diligently with you on behalf of Alabama’s municipalities. Our ability to navigate the political landscape is built on relationships – both at the State House and throughout Alabama. However, it’s not just the staff that relies on solid relationships. As locally elected officials, you also understand their significance – and that it’s never too early to build upon existing relationships or to forge new ones. **Relationships matter.**

League Efforts to Build Relationships

Realizing that relationships are critical in the legislative process, several years ago the League staff implemented a weekly “lobbyist luncheon” to meet with lobbyists representing municipalities from around the state to discuss their issues and how a combined effort can help move agendas forward. These meetings have been extremely successful and allow us to add more voices to the process. Working together is always critical; however, it will be even more imperative this session as we navigate a legislative cycle where lawmakers will be searching for ways to deal with tremendous budget deficiencies – which could generate unfunded mandates as well as other significant burdens for Alabama’s municipalities.

Therefore, we need **you** to be vigilant in this year’s legislative efforts– not just in working your six League legislative priorities, but in making sure municipal interests are protected as the session progresses. Please subscribe to the League’s weekly legislative e-newsletter, *State House Advocate*, if you’ve not done so already and be ready to respond to Legislative Alerts from the League. You can subscribe through the homepage of our website at www.alalm.org. We will only send an alert when immediate action is needed.

Relationships matter.

Building Relationships with Your Legislators Is a Year-Round Effort

Meet with him/her in person. If you don’t know your legislator, make an appointment to introduce yourself. You will have a unique opportunity to speak with your legislator(s) in person on the afternoon of April 7th immediately following the League’s Legislative Advocacy CMO session in Montgomery. If you have not already done so, please call the State House and make appointments to visit with your legislators on April 7th between 3:00 and 4:00 p.m. **To visit House Members** call 334-242-7600. **To visit Senate Members** call 334-242-7800. And please register to attend our Legislative

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A Brief Conversation with Governor Robert Bentley as he Begins his Second Term

As Governor Bentley began his second term, ALM had the unique opportunity to ask him his thoughts on several issues that directly affect municipalities. Our questions are in blue.

Governor, tell us about Atlas Alabama (atlasalabama.gov) – how it came about and why it’s important – not only for the small business community, but for Alabama’s cities and towns.



Atlas Alabama is a new website for entrepreneurs and small business owners that will provide a consolidated access point for basic information on doing business in Alabama including details on licenses, taxes, loans, funding sources and insurance. In addition, the site features a comprehensive list of national and state resource partners that exist to assist small business owners. Small businesses are the engines of job growth and an integral part of the framework that makes up the American economic system. When a small business owner adds jobs, the impact on a city is significant. The goal with Atlas Alabama is to provide a one-stop-shop for opening or expanding a small business in Alabama.

Can you discuss financial remedies for the General Fund (municipalities are always worried about unfunded mandates from the Legislature as they struggle with the budget)?

I will present my General Fund Budget to the Alabama Legislature on March 3rd and will outline my plan to fund state agencies. Details are still being worked out now, but my goal is to adequately fund our agencies so it can provide the best service for Alabamians.

What about new economic development incentive packages (we’ve seen a lot about this recently in the news ...)?

Alabama has been very successful in creating new jobs and helping existing companies expand. In fact, since 2011, we have created 63,000 new and future jobs in Alabama. These jobs are high skilled and high wage jobs. We created a strategic plan, called Accelerate Alabama, which focused on 11 different industries that are ripe for growth. Industries like aviation and aerospace and automotive manufacturing. We have an aggressive industry recruiting team that has helped to land Airbus in Mobile and Remington and Polaris in Huntsville. Part of what makes our recruitment successful is our ability to incentivize companies to come to Alabama. This Legislative Session, we will make adjustments and improvements to the way Alabama provides incentives to companies. Working together with the Legislative Leadership, this new Incentives Package will make Alabama more competitive in recruiting new companies and will, ultimately, create new jobs.

In 2013 the Legislature established a Bicentennial Commission to strategically plan for and prepare Alabama for its 200th Anniversary in 2019 (alabama200.org). ALM’s Communications Director, Carrie Banks, was asked to serve as the Co-Chair for the Local Activities Committee. What are your thoughts on the commemoration efforts and how they will affect the state and our communities leading up to 2019?

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New Year, New Quadrennium

Lieutenant Governor Kay Ivey

2015 is not just the start of a new year; it's the beginning of a new quadrennium for Alabama's elected officials. On January 19, 2015, on the steps of the Alabama State Capitol, I took the oath of office as Lieutenant Governor for the second time and for the fourth time in my career of public service. We were blessed with a warm and beautiful day in the Capital City. I enjoyed seeing the many mayors, city council members, county commissioners, and other local leaders who attended the festivities. I placed my hand on the Bible that belonged to my mother to reaffirm my commitment to Alabama and vow to complete the duties of Lieutenant Governor to the best of my ability.

Inauguration Day marked the turning of a page on a new chapter in Alabama history. The next four years are full of promise. We have many opportunities and many challenges ahead. Lawmakers and Governor Bentley have difficult choices to make to address the budget, prisons, education, and healthcare. When Legislators return this month for the Legislative Session, I'll preside over the Senate as they field solutions and discuss the consequences. If history is any indication, I anticipate lively debate.

A week before Inauguration, the Senate met for Organizational Session to elect leadership and adopt the rules by which they will abide over the next four years. They can be modified as necessary, but the rules adopted during Organizational Session lay the groundwork for how the Senate will operate during Legislative proceedings. Every new group of legislators has this opportunity to make changes to the rules. The rules are not the most thrilling part of the Legislative process, but they help set the pace and tone for the upcoming Session and they're necessary. In baseball, a batter is allowed three strikes before he's compelled back to the dugout. Even the most talented and athletic baseball players with years of experience must abide by this rule to keep the game going. We have a limited amount of time in the Senate – just 30 Legislative days – to conduct the people's business. With the adoption of effective rules, it is my goal, and the goal of Senate leadership, to keep the proceedings going and run the Senate as efficiently as possible for the benefit of Alabamians.

Before a bill makes it to the Senate floor for a vote, I assign it to one of several committees and it goes through the committee process. Previously, the Senate had 20 standing committees. Some committees struggled to reach a quorum because Senators were spread too thin trying to make several meetings at once; a few committees rarely received a bill assignment; and others duplicated the function of another committee. In an effort to encourage efficiency and ensure each bill is given proper attention, the committees were streamlined and reduced to 16. The Committee on Assignments, on which I serve, was the group tasked with organizing the committee structure and the Senators voted to approve the changes. Every Senator serves on at least one committee and each committee is made up of Republicans and Democrats. Every effort has been made to ensure that no one is left out.

Moving forward, I anticipate a continued focus on economic development and creating jobs. As my key priorities while in office, I will continue my work with the Military Stability Commission to strengthen Alabama's military assets and will endeavor to expand the State's involvement in the aerospace industry. The military in Alabama makes a \$17 billion impact. That kind of economic engine directly or indirectly affects every community in this state. It's vital to our state's economic health to maintain and strengthen our military assets. BRAC remains on the horizon. All it takes to move forward is Congress' approval. I will also use my role as Chair of the Aerospace States Association to promote Alabama's aerospace industry and work with other states to develop sound policies to promote and strengthen our nation's leadership in aviation and space. Alabama is a growing hub for aerospace development and advancement and we have many opportunities to expand its presence in our economy.

As Lieutenant Governor, I serve the people of Alabama. All the people of Alabama. I am honored to serve as your Lieutenant Governor. Please do not hesitate to contact me if I may be of assistance to you, or feel free to stop by my office in the Statehouse. ■

Lieutenant Governor Kay Ivey may be contacted at (334) 242-7900 or www.ltgov.alabama.gov. Connect on Facebook: [facebook.com/KayIveyAL](https://www.facebook.com/KayIveyAL). Follow on Twitter: @LtGovIvey.



Alabama Senate Looks to Build on Progress

Senator Del Marsh • President Pro Tempore

In the past four years, Alabama Republicans have enacted fiscally responsible, common sense reforms that have helped lower unemployment, significantly reduced government spending, and restored accountability to state government. The success we have seen on these fronts is a testament to the shared commitment of Gov. Robert Bentley, Lt. Gov. Kay Ivey, and the Republican Legislature to moving Alabama forward.

We are looking to build upon efficiency measures already enacted. The largest of these was the January 1, 2015, consolidation of various state law enforcement agencies into the Alabama Law Enforcement Agency (ALEA). It is estimated that this consolidation effort will save the taxpayers \$35 million a year. In the upcoming session we will be looking at a number of ways to streamline state government and make it more effective for the people of Alabama. One such effort will be legislation which will improve accountability and oversight for the Legislative branch. Not only do these common sense changes create a more effective government, but in the long run they will save the state over \$3 million annually.

Like many of you, I am concerned about the state of the General Fund budget. Estimates of the budget shortfall this year are projected to be anywhere from \$250 million to \$700 million. Let me assure you that every option is on the table when it comes to balancing our budgets. Putting the state on firm financial footing is an important priority. The past four years have been the most significant in decades when it comes to reducing the size and cost of state government. We have been good stewards of your tax dollars and reduced the size of state government by 11 percent, which was all done without mass firings or layoffs.

We have also made great strides to assist and protect our most valuable resource – the children of this state. Education is the corner stone of success not just for a child, but also for the community. All children are entitled to a quality education no matter what zip code they reside. Thanks to the Alabama Accountability Act, children who have been trapped in perpetually failing schools will now have the option to receive that quality education. Of the 5,000 children who have applied for scholarships through the Accountability Act, 3,000 of them were able to move out of a failing school to a school of their choice. However, due to lack of funding, there were another 2,000 who qualified for assistance but were unable to receive any. We should not allow any child who wants to better their education go without because of a lack of funding. For this reason, we will be looking into minor changes into the Accountability Act in the upcoming session.

In addition to small changes to the already successful Alabama Accountability Act, we are working on other school choice options such as charter schools and online virtual schools. These tools will give school systems across the state more local control and flexibility to innovate and meet the individual needs of their schools. Just last week, I joined with Speaker Mike Hubbard and thousands of concerned parents and students in Montgomery at a School Choice Week rally to continue the push for more school choice for parents and their children. While there is no silver bullet to cure all education problems, giving education leaders more tools to improve underperforming schools is a step in the right direction.

One of our top priorities over the previous four years has been improving the private sector economy and putting Alabamians back to work. We have made great progress, but we must continue to build on our successes. Secretary of Commerce Greg Canfield has proposed six pieces of legislation aimed at continuing to strengthen Alabama's economic recovery and lowering the unemployment rate. We are currently looking into these proposals, but we are committed to keeping Alabama competitive for new business in an increasingly globalized market – as well as giving existing businesses the resources for expansion and growth.

In the past four years we have seen large businesses such as Airbus come to Alabama; however, we must not forget about small businesses. We must make it easier for those who set out to create their own American dream by not overburdening them with needless government regulations and offer them financial incentives to help them continue to assist Alabama

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Alabama House Promises Bold Reforms

House Speaker Mike Hubbard

Many believe the last quadrennium to be the most productive, successful, and reform-minded four-year term since Alabama became a state in 1819. From protecting personal liberties to reforming state government to making needed improvements in public education, I am proud to have served during a quadrennium that historians will one day judge among the best. While we've made unprecedented progress, our work is far from done. Over the next four years, you can expect even more bold reform efforts that will continue to move Alabama forward.

Economic development and job creation have been and will continue to be our number one priority. Alabama's economy has dramatically improved with the unemployment rate at its lowest point in six years, and more than 63,000 new jobs created since 2011. Our efforts will continue until Alabama is recognized as the most business friendly state in the nation. We have been successful in convincing major companies such as Remington, Polaris, and others to build facilities and bring thousands of new, good-paying jobs to our state, but we refuse to rest on our laurels. In order to compete, we must strengthen our incentive packages for creating and recruiting new jobs for Alabama workers and families.

We recognize that 80 percent of new jobs created in our state are created by existing businesses. Helping existing businesses grow and expand is equally as important as recruiting new businesses to our state. Unfortunately, there are few existing options available for existing businesses and industries to receive a helping hand to produce more jobs for more Alabama workers. More must be done to incentivize companies already located here to create new jobs, upgrade facilities, obtain new equipment, and grow as a business.

Alabama's economic development success has brought with it a record number of highly-skilled, high-paying jobs. In fact, the need and demand for skilled workers in the technical and manufacturing fields exceeds what Alabama's current workforce can offer. In order to keep current industries and recruit new ones, our workforce must be competitive with those offered by other states and international communities. A strong and skilled workforce will help ensure that more Alabamians have long-lasting, good-paying jobs.

We will continue to promote workforce development efforts, specifically dual enrollment, to ensure that Alabama students are graduating ready for future education or the workforce. Career-technical dual enrollment is one of the best tools we have to ensure our state has the highly-skilled and capable workforce we need both now and in the future. Partnerships with high schools and two-year community colleges across the state allow high school students the ability to obtain college credit and standard certification in many technical and manufacturing-based fields. In just two years, many of these students are ready to enter Alabama's workforce in a high-paying, high-demand job.

Alabama has seen tremendous improvements in our education system over the past few years, including the highest graduation rate in our state's history. But as long as there are students stuck in schools that do not meet their needs, parents and families must be provided with additional school choice options. Every child in Alabama deserves access to a quality education regardless of their economic status, race, or zip code. In 2013, Alabama began to expand school choice through the Alabama Accountability Act, which provided unprecedented flexibility for local school systems, along with tax credit and scholarship programs for parents with students in failing schools. These options have expanded innovation and allowed more than 4,000 Alabama students to move to other schools that have provided them with a better education. In order to ensure that every child has the best education possible, parental empowerment and school choice must continue to expand in Alabama.

Perhaps the most challenging obstacle we will face this year is the state's General Fund budget. Estimates of the shortfall range from \$250 million to \$700 million. We're taking an everything-on-the-table approach to solving the budget shortfall including examining every single area of state government and continuing to streamline and increase efficiency. We won't do anything that would potentially slow the economic growth we're experiencing in the state of Alabama. We are

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MUNICIPAL LEGISLATIVE ADVOCACY

Embassy Suites • Downtown Montgomery • April 7 • 8:30 a.m. until 4:30 p.m.
 Registration – \$125 • Five (5) CMO Credit Hours (Basic, Advanced, Continuing)

www.alam.org to download registration forms

The League's Annual Municipal Legislative Advocacy CMO is specifically designed to allow municipal officials to share their ideas and concerns with the state's political leadership. It is important that the vital role our municipalities play in economic development, community enhancement and quality of life is repeatedly articulated to our state representatives. The League's Municipal Legislative Advocacy Session provides a unique opportunity each year for municipal leaders to take their messages to the State House – and for the power of the ALM membership's collective voice to be heard. A strong municipal presence at the State House demonstrates the effectiveness of the state's cities and towns in building a stronger Alabama economy.

| | |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8:30 – 9:15 a.m. | Registration |
| 9:15 – 9:30 a.m. | Welcome: Mayor Wally Burns, Southside, President, ALM Councilmember Donald Myers, Guntersville, Chair, Committee on State and Federal Legislation |
| 9:30 – 9:45 a.m. | League Advocacy Publications: Carrie Banks, Communications Director, ALM |
| 9:45 – 10:30 a.m. | ADECA Briefing: Jim Byard, Jr., Director, Alabama Department of Economic and Community Development |
| 10:30 – 10:45 a.m. | Refreshment Break |
| 10:45 – 11:30 a.m. | What's Ahead for the Dept. of Commerce: Greg Canfield, Director, Alabama Department of Commerce |
| 11:30 – 12:15 p.m. | Atlas Alabama: Julie Magee, Commissioner, Alabama Department of Revenue |
| 12:15 – 1:30 p.m. | Lunch: Sen. Jabo Waggoner, Chair, Rules Committee; Sen. Arthur Orr, Chair, Senate General Fund Budget Committee and Chair, Alabama Bicentennial Commission |
| 1:30 – 2:15 p.m. | State and Federal Update: Hal Bloom, the Bloom Group, and Britton Bonner, Adams and Reese |
| 2:15 – 3:00 p.m. | ALM's 2015 Legislative Agenda: Greg Cochran, Director, Intergovernmental Relations, ALM |
| 3:00 – 4:30 p.m. | Legislative Visits: Alabama State House |

Note: the last bus to the Embassy Suites will leave the State House at 4:30 p.m.

**Please make appointments ASAP to visit with your legislators
 on April 7th between 3 and 4 p.m.**

To visit House Members call 334-242-7600. To visit Senate Members call 334-242-7800



Senator Marsh

continued from page 23

in its economic resurgence. It is our goal to make Alabama the most competitive and attractive state – both for businesses looking for new locations and those that are already here.

Our state leaders are firmly committed to right-sizing state government and controlling spending. While we have seen great progress over the last four years, there is still more work to be done. The state legislature greatly appreciates your commitment to serving the people of Alabama as municipal officials. We look forward to working with you to ensure local municipalities are able to operate effectively and continue meeting the needs of the citizens you serve. ■

Del Marsh represents Calhoun County and portions of Clay and Talladega Counties. He has served as President Pro Tempore of the Alabama Senate for the previous four years. You may reach Senator Marsh by phone at (334) 242-7877 or by e-mail at Del.Marsh@alsenate.gov.

Speaker Hubbard

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committed to working with Governor Bentley and the rest of our legislative leadership to find the right solution.

Alabama is moving in the right direction, but our work is not done. We will continue to right-size government, create jobs and expand the economy, and ensure the next generation is prepared for the workforce of tomorrow. Our door is always open and we look forward to working with you towards accomplishing your goals. ■

Mike Hubbard (R-Auburn) serves as Alabama’s Speaker of the House and represents District 79, which encompasses much of Lee County. Follow Speaker Hubbard on Twitter @SpeakerHubbard and Facebook at facebook.com/MikeHubbard79.



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Governor Bentley

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Alabama's Bicentennial will be a great time for every city and town across Alabama. It is an opportunity to celebrate our history and look forward to the next 200 years. There will be many events planned across the state, and I encourage Alabamians to take advantage of the celebrations and educational opportunities that will emerge over the next few years. A website has been launched (alabama200.org), which will be updated regularly as the three planning committees – Local Activities, Education and Statewide Initiatives – release updates, timelines, grant opportunities and plans for not only celebrating our unique history but embracing our future.

Do you have specific second term goals you'd like to share?

We have come so far in the last four years. Unemployment has dropped to its lowest level since 2008. People are working who did not have a job four years ago. State government is running more effectively and efficiently, and we have saved taxpayers over \$1.2 Billion annually. We have some big challenges over the next four years. We face a budget shortfall into the hundreds of millions of dollars. We must address the problems that plague our prison system. We must work to improve the well-being of our people by making health care more accessible and affordable to everyone.

I believe Alabama's best days lie ahead. Serving as a Governor is the most exciting and challenging thing I have ever done. Alabama is an exceptional state with good, hard-working people. I love Alabama, and I love the people of this state. I enjoy getting out of out of Montgomery and visiting our Alabama cities and towns and the people who live there. It is an incredible honor to serve as Governor. ■

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, and re-elected in 2014. To contact the Governor's Office, call (334) 242-7100. Visit his website at governor.alabama.gov.

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Legislative Primer

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will meet in session two days per week and schedule committee work on the other days.

Types of Bills

Amendment 397 to the Alabama Constitution of 1901 states that a general law is a law which in its terms and effect applies either to the whole state or to one or more municipalities of the state less than the whole in a class.

A special or private law is one which applies to an individual, association or corporation. A local law is a law which is not a general law or a special or private law.

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

Section 106, as amended by Amendment 341, of the Alabama Constitution of 1901 states that notice of all local bills must be published, prior to introduction, at least once a week for four consecutive weeks in some newspaper published in the county. If no newspaper is published in the county, then the notice must be posted, prior to introduction, for two consecutive weeks at five different places in the county.

Steps in Passing Legislation

If a member of the legislature decides that a proposal has merit and that legislation should be enacted, the legislator prepares a bill or has a bill prepared for introduction into the house of which he or she is a member. That legislator then becomes the sponsor of the bill. All bills introduced must be prepared by either the Legislative Reference Service (LRS) or the Legislative Fiscal Office (LFO) as directed by a member of the Legislature.

The LRS is the principal bill drafting and legal research office serving the Legislature of the State of Alabama. LRS is a great source of information to the citizens of Alabama on all things relating to legislation. In addition to bill drafting, the duties of the LRS office include:

- Responding to questions concerning the organization and administration of state government or the operation of constitutional or statutory law.
- Rendering assistance in the drafting of bills and amendments to bills at the direction of a member of the Legislature.
- Making studies and reports on problems of state and local government in Alabama, either upon request or on one's own initiative.
- Conducting a continuous analysis of the scope, effect, and methods of federal, state, and local government operations in Alabama and making recommendations to the Legislative Council as appropriate.
- Preparing, when directed by the Legislature, a compilation or code of the statutes of Alabama.
- Acting as Code Commissioner in determining the content of the Code of Alabama 1975 and any supplements thereto and preparing an annual codification bill to adopt changes to the code enacted at prior sessions of the Legislature.
- Entering into a printing contract on behalf of the State of Alabama, when approved and directed by the Legislative

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Council, to publish the official code of the statutes of Alabama.

- Publishing the Alabama Administrative Monthly and the Alabama Administrative Code.

The LFO was established for the purpose of providing independent, accurate and objective fiscal information to members of the Alabama Legislature. They also provide bill and amendment drafting services much like the LRS. Additional duties of the LFO include:

- serving as primary staff for the House Ways and Means Committees and Senate Finance and Taxation Committees;
- fiscal analysis of legislative proposals and preparation of fiscal notes on bills which are introduced;
- analysis for the legislature of executive budget, tax and revenue proposals;
- drafting of legislative budget, tax and revenue proposals and related legislation;
- tracking of budget, tax and revenue legislation;
- analysis of agency budgets and budget requests;
- monitoring of state tax and other receipts;
- revenue estimating;
- certification (in conjunction with a separate certification by the Director of Finance) by the Legislative Fiscal Officer of projected growth in the Education Trust Fund by the third legislative day of each regular session (as required by Act 2000-732- the “National Average for Teachers’ Salaries” Act);
- special evaluations of programs or agencies as designated by the Joint Fiscal Committee;
- general research upon request of legislative committees or individual legislators; and
- publication and distribution of materials to communicate fiscal information to legislators and the public.

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

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

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

Section 62 of the Alabama Constitution of 1901 states that no bill shall become a law until it has been referred to a standing committee of each house, acted upon by such committee in session, and returned therefrom.

Standing committees are charged with the important responsibility of examining bills and recommending action to the full House or Senate. At some time when the House or Senate is not in session, the committees of each house will meet and consider the bills which have been referred to them and decide whether or not particular bills should be reported to the full membership. It is during these committee sessions that members of the general public are given an opportunity to speak for or against the measures being considered by the standing committees.

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

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

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

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

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

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

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

After a bill has been voted on, any member who voted with the prevailing side may move to reconsider the question, but the time within which bills may be reconsidered is limited in both houses. Bills passed in one house are sent to the other house by a formal message and the bills then receive their first reading in the second

house. Proposals go through the same procedure in the second house committee study and report, second and third readings and floor debate and votes.

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

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

Sometimes a house may refuse to adopt the report of the conference committee and ask for a further conference. If the committee is still unable to reach an agreement, it may ask to be discharged and request the appointment of

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another conference committee to begin the process again. If the conferees never agree, the bill is lost.

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

Action by the Governor

When a bill reaches the Governor, he or she may sign it and thus complete the enactment of a bill into law. However, if the Governor objects to the bill, he or she may veto it or suggest amendments to the bill and return it to the house of origin. The bill is then reconsidered, first by the originating house and, if passed, by the second house. If a majority of the members elected to each house agree to the proposed amendments, the bill is returned to the Governor for his or her signature. If both houses cannot agree to the Governor's amendments or if the Governor proposes no amendments but returns the measure, the bill has, in effect, been vetoed. The houses then may try to override the Governor's veto. An affirmative vote of 18 Senators and 53 Representatives is required to override the Governor's veto.

If the Governor fails to return a bill to the house of origin within six days after it is presented to him or her, Sundays excepted, the bill becomes law without the Governor's signature, unless the return was prevented by recess or adjournment. In such a case, the bill must be returned within two days after the legislature reassembles or the bill becomes law without the Governor's signature. Bills which reach the Governor less than five days before the end of the session may be approved by him or her within 10 days after adjournment. Bills not approved within that time do not become law. This is known as the pocket veto. The Governor has the authority to approve or disapprove any item or items of an appropriation bill without vetoing the entire bill.

Budget Isolation Resolutions

Amendment 448 to the Alabama Constitution of 1901 states that the Governor must submit a proposed budget to the legislature by the second day of each regular session. The legislature must make the basic appropriations

necessary for the current budgetary period before passing any other legislation. However, if three-fifths of a quorum adopt a resolution declaring that this restriction does not apply to a certain bill, that bill may proceed to final passage. This is known as the budget isolation resolution and permits the legislature to enact legislation prior to adopting a budget.

Unfunded Mandates

The Alabama Constitution provides that any general law whose purpose or effect is to require a new or increased expenditure of funds held or disbursed by the governing body of a municipality or county, or instrumentality thereof, shall not take effect unless (1) it is approved by the affected governing bodies or (2) the legislature provides funding to pay for the mandate or (3) the legislature passes the legislation by the affirmative vote of two-thirds of those voting in each house. Amendment 621 of the Constitution of Alabama of 1901.

The amendment does not apply to: (1) local laws; (2) acts requiring expenditures of school bonds; (3) acts defining new crimes or amending definitions of crimes; (4) acts adopted prior to the ratification of the amendment; (5) acts adopted to comply with federal mandates, only to the extent of the federal mandate; (6) acts determined by the Legislative Fiscal Office to have an aggregate insignificant fiscal impact on affected governments; or (8) acts of general application prescribing the minimum compensation for public officials. The term "aggregate insignificant fiscal impact" shall mean any impact less than \$50,000 annually on all affect governments statewide.

Conclusion

The purpose of this article is to give the reader a basic understanding of the Alabama Legislature as well as the process for introducing and passing legislation. It is important for municipalities to have a good basic understanding of the Alabama's legislative process. For further questions relating to Alabama's Legislature and the legislative process, contact the Legislative Reference Service or the Legislative Fiscal Office. For questions relating to legislation affecting municipalities, please contact ALM's Governmental Affairs Department or the Legal Department. ■

Relationships Matter

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Advocacy Session (see information on page 21). This workshop is extremely important to every municipal official. You can download registration information at www.alalm.org.

Offer assistance to your legislators. Be sure to ask: “What can I do for you?” Don’t wait until you need their assistance on an issue. This will go a long way in strengthening your legislative relationships.

Prepare a brief summary of legislative issues that are important to your municipality. If your city or town has a particular issue (or issues) that you wish to discuss, prepare a one-page summary of the issue that you can leave with your legislator(s). Don’t forget to also provide this same information to his or her legislative assistant.

Invite legislators to attend local and regional meetings. This will give them an opportunity to meet with their constituents and to discuss priorities.

Become personally acquainted with the legislative staff. Always be courteous. They are your link to getting an appointment and can help you with your legislative issues. **Brief legislators on what’s going on in your community.** Add legislators to your city mailing list (both electronic and snail mail) for important issues.

Invite legislators/staff to visit. This is a critical factor in building strong relationships. Show them your quality of life projects, such as water treatment plants, parks, schools, transportation projects, revitalization efforts, etc.

Publicly recognize legislators for good deeds and remember to *personally* thank them for their support.

Relationships matter. ■



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PROVIDING CABLE AND HIGH-SPEED INTERNET: OPELIKA'S STORY

WENDY L. HASSETT, PH.D. AND
DOUGLAS J. WATSON, PH.D.

Increasingly, high-speed internet services are considered a vital component of a healthy community, particularly for communities concerned with a high quality of life, innovative economic development ventures, improving access to healthcare, and diverse educational and employment opportunities. The unfortunate reality of many communities, particularly those in more rural areas, is that they are held captive to one or two private corporations that are willing to invest the capital it requires to provide cable and/or internet services. In some cases, the provision of these services runs smoothly and citizens are satisfied with the broadband offerings. However, in other cases, the services, if available at all, are considered to be sub-standard, triggering complaints from residents and businesses.

Many municipal officials in Alabama are quite familiar with these concerns over high-speed internet and cable television services. When existing service in a city is mediocre or poor, city leaders can either live with the poor service or do something about it. In certain situations, the private sector has ignored or otherwise failed to address customer demand for better services or more affordable access. Often private high-speed internet network providers are not willing to make significant upgrades or to invest in new infrastructure as a community grows until they have established that the financial investment will be profitable. Communities that lack high-speed internet services find it more difficult to attract and retain businesses, offer high-quality health care, and provide excellent educational opportunities.

In response to the lack of service provision or sub-standard service provision offered by the private sector, the public sector has stepped in to provide services in some communities. In fact, in more than 130 cities across America, government-owned broadband networks (GONs) are providing cable, high-speed internet, and phone services to residents and competing directly with the established cable companies in their jurisdictions (ISLR, 2015). In support of this effort, a number of organizations, such as the Institute for Local Self-Reliance (ISLR), have sprung up in support of municipally-run cable networks.

Proponents of government-provided broadband services

argue that cities are stepping in to fill a gap in the private sector provision of high quality services. However, government-owned broadband networks (GONs) also have strong critics. Heated policy debates have been fueled over the appropriate role of government in providing a service that has historically been provided by the private sector. Increasingly, however, high-speed internet services are being viewed as a “utility” that is just as necessary as the provision of water, sewer service, roads, and electricity. The debate continues over the appropriate role of and efficacy of government in this space in light of the historical evolution of this highly-competitive and innovative private sector-dominated market.

The debate spills into the policy realm as well. Government penetration into the cable market has not been lost on state and federal legislators. Proposed legislation outlining the removal of restrictions on governments to provide high-speed internet service continues to be debated across the country. Also at the heart of the policy debate is the appropriate role of the Federal Communications Commission (FCC) (Holmes 2014). This debate has spurred attention from academics as well. A report published in the summer of 2014 by New York Law School that looked at 10 GONs across the country over the past decade suggested that GONs “should be seen as a cautionary endeavor rather than a replicable model” due to “volatile business models, significant debt, and uncertain financial futures” (Davidson & Santorelli, 2014, xiii).

Opelika: Taking the Lead

One city that decided to develop its own fiber optic network is Opelika, the first city in the State of Alabama to design, build, own, and operate its own cable system in direct competition with private sector providers. In the early years of the 21st century, City leaders sought out a rival cable company to compete with the primary established provider because of the numerous complaints about poor service. Opelika leaders hoped that adding another service provider would allow residents to have a choice between two competitive companies instead of feeling captive by the one corporation offering these services to the Opelika market.

After a careful examination of the potential profitability of the community, the rival cable company decided that it was not financially feasible to enter the Opelika market. Several years later, Opelika officials attended a national convention where a former director of the Opelika Power Services (OPS) then in Tullahoma, Tennessee, spoke about his city's decision to build its own cable system. This conversation introduced another option for Opelika leaders: public provision of cable, high-speed internet, and phone services.

By 2007, Opelika officials realized that the City was in an advantageous position to offer cable, internet, and telephone services because it owned and operated the electric power service. As a result, it had the equipment, manpower, power poles and other infrastructure, as well as knowledgeable personnel who could advise in the design and construction of a fiber optic system. With an undertaking of this magnitude, City leaders realized that a professional feasibility study was necessary and hired Uptown Services, LLC to conduct the study. Uptown Services, a leading broadband and telecommunications consulting company for the public sector, had completed approximately 50 similar studies for other communities by the time it was hired to do the Opelika study.

In October 2008, Uptown Services presented its in-depth feasibility study to the Opelika City Council. Its conclusion was that Opelika was in an excellent position to have a successful and profitable system within a fairly short period of time. Based on

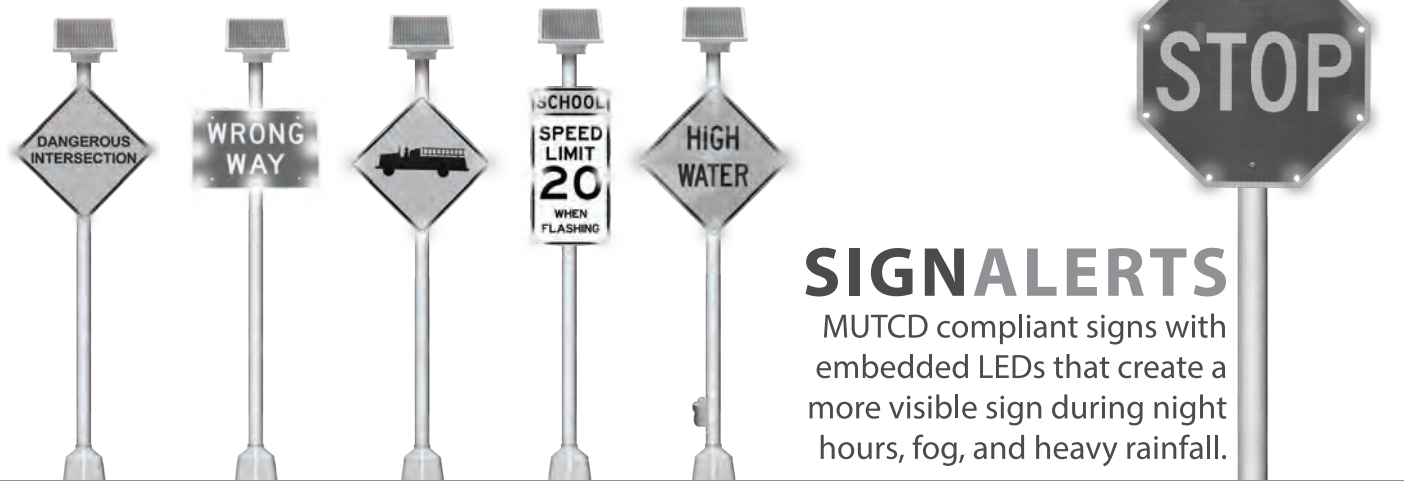
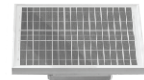
the community's general dissatisfaction with the current options for cable and internet services, Uptown Services concluded that Opelika would be able to attract sufficient customers to be profitable in short order. Uptown Services estimated that Opelika would have a positive cash flow in the third year of operation and would have a strong reserve after the first decade of operations.

Local government officials know that Alabama is a Dillon's Rule state, which means that cities can only do what the State allows them to do. Fortunately for Opelika, the State Legislature had passed the Communications Act of 2000 (appearing as Section 11-50B-8 of the Code of Alabama) sponsored by Senator Ted Little of Lee County that allowed municipalities "to acquire, establish, purchase, construct, maintain, enlarge, extend, lease, improve, and operate cable systems, telecommunications, equipment, and telecommunications systems for purposes of furnishing cable services, interactive computer service, Internet access and other Internet services, and advanced telecommunications services ..." The law required that no taxpayer money could be used for this purpose. This required a city-owned system to be operated as an enterprise fund. It also required approval from the voters in a referendum.

Allowing ample time for public discussion, Mayor Gary Fuller and members of City Council decided to begin the formal approval process to build, own, and operate "a new cable television system to provide cable service to subscribers within the corporate limits of the City" (Gary Fuller, personal



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Activation



communication, November 3, 2014). On June 1, 2010, the City Council passed a resolution calling for a public hearing to receive formal feedback from the community and other interested parties. Two weeks later, following the public hearing, the City Council enacted an ordinance calling for a special municipal election on August 10 to determine if Opelika voters favored the City's plan to enter into the cable business via a fiber network (or smart-grid).

The question before the voters was as follows: "Shall the City of Opelika, Alabama, be authorized to acquire, establish, purchase, construct, maintain, lease and operate a cable television system for the purpose of furnishing cable service to subscribers?" The results were overwhelmingly positive with 62 percent voting in favor of the proposition. The overwhelmingly positive results indicated both a dislike for the private sector service options available to Opelikans, as well as the trust and confidence they placed in the City.

The administration of Mayor Fuller moved quickly to secure the \$45 million needed to finance the new system, which included a new facility for the Opelika Power Services that provides electric service to residents and businesses within the City. In November 2010, the City Council authorized the issuance of a warrant to Regions Bank and completed the financing for the project by the following March. A Request for Proposals was issued during this same period, and construction was started by June 2011.

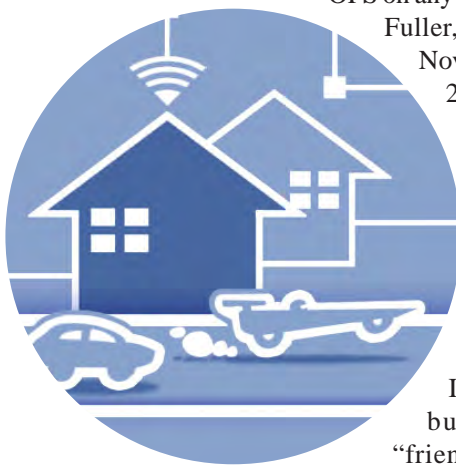
In April 2013, with the completion of the installation of the fiber optic network, Opelika Power Services begin to connect test customers to the system. Before the official launch of the residential service in October 2013, 230 test customers had been connected as a pilot to allow the City to work out any problems before the large-scale launch of services. Mayor Fuller noted, "These customers were given complimentary service during the testing phase, and in return, they provided valuable feedback to

OPS on any suggestions or issues" (Gary Fuller, personal communication, November 3, 2014). In October 2013, the official launch of residential services was celebrated, and all residential customers were billed for the first time.

Once the residential service was initiated, the City turned its attention to business customers.

In December 2013, a few businesses considered as "friendly test customers" were added to the system, and by September

2014, the City officially began to enroll business customers and charging them the business rates. By the end of the first year of operation, the City had 2200 customers with expectation of many more each month. The fiber optic network is available to every home in Opelika, and Mayor Fuller expects the system to break even in three to five years and be profitable for the City after that time.



Mayor Fuller recognized early in the process that City leaders needed to rely on the experience of other cities that had taken a similar route to provide fiber optic service to their residents. One city that was the undisputed leader was Chattanooga, Tennessee, and Mayor Fuller reached out to that city for advice. Ultimately, Opelika signed a formal consulting agreement with Chattanooga and utilizes its help desk to provide customer service to Opelika residents. If an Opelika customer has a problem, he or she calls the help desk that is located in Chattanooga and the help desk dispatches the service technician located in Opelika. This partnership has been a key to Opelika's success with its GON.

Chattanooga: The Model for Government-Owned Broadband Networks (GONS)

The city of Chattanooga, Tennessee, which operates a highly reliable city-wide gigabit-per-second broadband service, was a model for Opelika leaders and eventually served as a type of mentor to the city as it considered providing similar services. Chattanooga offers its residents, businesses, and schools competitively priced ultra-high-speed internet connections that are faster than what is offered by the private sector.

Like Opelika, Chattanooga operates its own power company, the Electric Power Board (EPB). In 2008, Chattanooga began building its smart power grid allowing the city to re-route electricity throughout the city. In addition to regulating electricity, this high-tech power grid enabled the city to provide internet services as well. In spite of a number of lawsuits lodged against Chattanooga by various internet service providers (ISPs) and other organizations, the city secured a \$111 million stimulus grant from the US Department of Energy to complete the upgrade it envisioned. Estimates are that, in total, Chattanooga's smart power grid and robust broadband networks cost some \$390 million to become a reality (McCarthy, 2012).

Chattanooga's broadband and telecommunication network, which offers bundled video, phone, and internet services, was operational in September 2009. In 2014, the city boasted some 5,000 business customers and more than 57,000 residential customers. The city's broadband service prices are highly competitive with private sector providers (O'Toole, 2014).

One of the economic benefits enjoyed by Chattanooga was the emergence of a local technology business niche that is dependent on a reliable and high-speed broadband. While the statistical economic results that can be attributed to Chattanooga's GON are still unclear, residents have enjoyed the economic growth occurring in the downtown since the city's GON was put in place. New commercial ventures, entrepreneurial investment, and technology-based companies have burgeoned where empty buildings once stood (Wyatt, 2014). In fact, the Chattanooga Area Chamber of Commerce estimates that the city's broadband services played a significant role in the location or start-up of at least 90 technology-related businesses (Flessner, 2014). For example, Claris Networks, which offers cloud computing and IT services, relocated its company to Chattanooga in large part because of the affordability and reliability of the network provided by the EPB smart grid (O'Toole, 2014).

Opelika is not the only city to take note of what has been happening in Chattanooga. Over the past few years, the city has hosted a number of domestic and foreign visitors that have been interested in getting a first-hand look at Chattanooga's high-speed broadband operations. Delegations have included groups from the UK; Japan; New Zealand; Ireland; Harvard Business School; Phoenix, Arizona; Pensacola, Florida; Blacksburg, Virginia; Cleveland, Ohio; and Holland, Michigan (Flessner, 2014).

Advice for Cities

Not all cities have been as successful as Opelika and Chattanooga (see the 2014 New York Law School report for more details about various case studies). Critics argue that government involvement in this market discourages private sector competition over the long range (Flessner, 2014). In addition, legal, operational, financial, and market risks are always serious factors. Therefore, a number of considerations are offered to cities that are looking at the possibility of a public broadband project:

1. Do some preliminary research. Learn what other cities have done in this arena and what support already exists. Organizations such as the Institute for Local Self-Reliance (ISLR), offer support and advice for cities considering GONs. ISLR even offers a "Community Connectivity Toolkit" in support of communities interested in considering different options.

2. Complete a professional and robust feasibility study, including a detailed financial analysis, before any work is done. One of Opelika's first steps was to engage a nationally-recognized firm to study carefully the Opelika market to determine if the City could be successful. At this point, the study's

conclusions have proven to be on target, and Opelika is moving toward profitability ahead of schedule.

3. Realize that a GON is not the only answer. GONs bring with them both risk and reward. Furthermore, there is not a one-size-fits-all model. Each community has unique characteristics that are critical to consider. For example, Opelika's established power company allowed the city to leverage that organization to move into the cable, high speed internet, and phone market. Communities that do not operate their own power companies need not sit on the sidelines. Forging new partnerships with private sector providers, working with state legislators, and being proactive in addressing citizen concerns will make sure that the community is not left on the wrong side of the digital divide. Communities are wise to carefully consider all their options, while being fiscally responsible and accountable to citizens.

4. Find a successful city that can serve as a mentor for your city. In Opelika's case, it identified Chattanooga as a role model and learned from that city the positive steps to take and the pitfalls to avoid. Of course, any Alabama city would be wise to contact Mayor Fuller and his staff to learn from their experiences. That said, there are many case studies published of cities across the country that have launched GONs. It is important to learn from the experiences of other cities – both the successful and the unsuccessful – in order to identify a community that might serve as a useful mentor.

5. Consider state legislation and legal requirements. Since State law does not allow taxpayer money to be used, Alabama cities must create an enterprise fund or use an existing one. In the case of Opelika, the Opelika Power Services had a long

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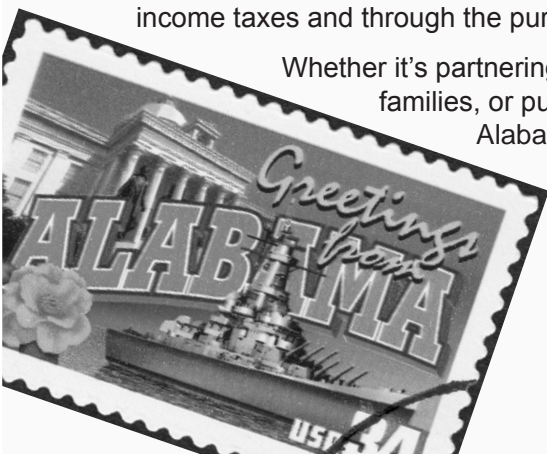
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history of providing electric service to residents and businesses so it was the natural organization in which to locate the cable service. Chattanooga's Electric Power Board fulfills a similar role in that city. Some 19 states have legislative barriers to local communities entering this market.

6. Once the system has been installed, create a test group that will use the service and provide honest feedback to the city. To offer the service directly to the community's residents without a pilot test group is risky since credibility can be easily lost if the service is poor. The test group in Opelika consisted of trusted individuals who wanted the system to be successful and were willing to evaluate carefully the quality and reliability of the service. Once the test group was satisfied, the City felt confident in selling its unique product to the larger community. ■

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Dr. Douglas J. Watson is a Distinguished Research Fellow for the Center for Leadership and Public Policy at Alabama State University. He retired as city manager of Auburn before serving as Professor of Public Administration at the University of Texas at Dallas from which he retired in 2010. He lives in Auburn where he is active on boards of the City of Auburn and various non-profit organizations.

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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. When trying to determine what Alabama law applies in a particular area or on a particular subject, it is often not enough to look at a single opinion or at a single provision of the Code of Alabama. A review of the Alabama Constitution, statutory law, local acts, administrative law, local ordinances and any relevant case-law may be necessary. 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

Tort Liability: Municipal immunity did not apply to a town that sought extraterritorial jurisdiction over the private property of developer so that the municipality could prevent development of that property. There was evidence that actions of the town and its planning commission were negligent beyond wrongful decision making, and public welfare exception to general rule of no immunity did not apply, given that town seemingly lacked a public interest reason for delaying the consideration of developer's plat application. Further, damages cap limiting municipality's liability for damage or loss of property arising out of a single occurrence to no more than \$100,000 did not apply to action by developers against town for damages associated with town's refusal to approve subdivision plat; damages cap applied only to tangible property, and developers' action sought lost profits. *Lee v. Houser*, 148 So.3d 406 (Ala.2013)

UNITED STATES COURT DECISIONS AFFECTING ALABAMA

Zoning: 47 U.S.C. § 332(c)(7)(B)(iii), which provides that a locality's denial of an application to build a cell phone tower "shall be in writing and supported by substantial evidence contained in a written record," requires localities to provide the reasons for such denials in writing. However, those reasons do not have to appear in the written denial letter as long as they appear in some other written record, are sufficiently clear, and are provided or made accessible to the applicant essentially contemporaneously with the written denial notice. *T-Mobile South, LLC v. City of Roswell, Ga.*, 135 S.Ct. 808 (U.S.2015)

Tort Liability: Public housing authority's letter to a

Section 8 tenant notifying her that she could request a hearing following her termination from voucher program for failing to find suitable housing before her voucher expired did not create a property interest by estoppel to support the tenant's § 1983 claim against public housing authority for violation of her procedural due process rights. The authority neither promised tenant a hearing nor told her she was entitled to one, and the authority had broad discretion to determine whether to grant a hearing or not. *Ely v. Mobile Housing Bd.*, 13 F.Supp.3d 1216 (S.D.Ala.2014)

Tort Liability: City police officers had arguable probable cause to arrest suspect for disorderly conduct, under Alabama law, and thus officers were entitled to qualified immunity from suspect's § 1983 Fourth Amendment false arrest and imprisonment claims *Windham v. City of Fairhope, Ala.*, 772 F.Supp.3d 1323 (S.D.Ala.2014)

Civil Rights: A cemetery is not a "place of public accommodation" within the meaning of Title II of Civil Rights Act. *Tippins v. City of Dadeville, Ala.*, 23 F.Supp.3d 1393 (M.D.Ala.2014)

Employment-Discrimination: A town's water works and sewer board was an agency or instrumentality of the town, as required for the board to qualify as an employer under the ADEA; town was a political subdivision of the state and board was public corporation organized according to state law. Age Discrimination in Employment Act of 1967. *Holloway v. Water Works and Sewer Bd. of Town of Vernon*, 24 F.Supp.3d 1112 (N.D.Ala.2014)

DECISIONS FROM OTHER JURISDICTIONS

First Amendment: An injunction requiring some Puerto Rico municipalities to give Jehovah's Witnesses access to gated communities along public streets is warranted in a § 1983 claim action alleging Puerto Rico's Controlled Access Law (CAL), which allowed municipalities to authorize neighborhood associations to erect gates enclosing public streets, violated First Amendment rights of religious tract distributors who sought access to those streets for protected speech activities. The district court's remedial scheme, requiring that unmanned gated communities allow distributors access to public streets through issuance of access codes or keys, upon distributors' disclosure of their purpose and identities, was narrowly tailored to strike a balance between the distributors' significant interest in accessing public streets to carry out their ministry and the government's significant interest in the security of residents. Such scheme allowed



distributors access to gated communities, the sharing of keys was not especially onerous to distributors, and scheme did not impose undue administrative burdens upon municipalities. *Watchtower Bible and Tract Society of New York, Inc. v. Municipality of San Juan*, 773 F.3d 1 (C.A.1 Puerto Rico 2014)

Search and Seizure: Under the Fourth Amendment's prohibition of unreasonable searches and seizures, a search or seizure may be permissible even though the justification for the action includes a reasonable factual mistake. Under the Fourth Amendment, to justify traffic stops, officers need only "reasonable suspicion," that is, a particularized and objective basis for suspecting the particular person stopped of breaking the law. *Heien v. North Carolina*, 135 S.Ct. 530 (U.S.N.C.2014)

First Amendment: A Mississippi school board violated the First Amendment by suspending a student for posting on the internet a rap song accusing two coaches of sexual harassment. Assuming public school could prohibit student's off-campus speech upon forecasting that it would cause substantial disruption of or material interference with school activities, school officials could not reasonably forecast substantial disruption from, and no actual disruption occurred due to, high school student's posting on Internet video of him singing song that alleged that two coaches at school had had improper contact with female students. Therefore, suspension and transfer of student violated his First Amendment speech rights; song was composed, recorded, and posted to Internet entirely off campus, school computers blocked social networking site, school policy prohibited possession of phones, and there was no commotion, boisterous conduct, interruption of classes, or any lack of order, discipline and decorum at school, as result of student's posting his song. *Bell v. Itawamba County School Board*, 774 F.3d 280 (C.A.5 Miss.2014)

Employees: Annual payment given to a city police officers was more appropriately characterized as reward for lengthy service, rather than as compensation for work performed, and thus Uniformed Services Employment and Reemployment Rights Act (USERRA) guaranteed the police officer, who served in Air Force Reserves for eight months of year in question, his full annual payment, rather than prorated portion based on work actually performed as police officer. *DeLee v. City of Plymouth, Ind.*, 773 F.3d 172 (C.A. 7 Ind.2014)

First Amendment: A requirement that firefighters who objected to assignment on religious grounds serve as part of crew on fire engine in parade to celebrate lesbian, gay, bisexual, and transgender community did not violate firefighters' right to freedom of religion or right of freedom of speech and association under state constitution. The order to participate in parade was common, and firefighters participated in parade as relatively anonymous public servants. *Fabrizio v. City of Providence*, 2014 WL 7229270 (R.I.2014)

First Amendment: City justifiably terminated a police officer for posting statements criticizing the police officer on the mayor's public Facebook page because she caused a disruption, and the city's interest in maintaining discipline and good working relationships in its police department

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outweighed her free speech interests. *Graziosi v. City of Greenville Miss.* --- F.3d ----, 2015 WL 148998 (C.A.5 Miss.2015)

ATTORNEY GENERAL'S OPINIONS

Public Works Bid Law: Because the city will possess a contractual right to purchase the property upon which the City Hall Complex will be built, the construction thereof is a public works project subject to bidding pursuant to sections 39-2-1 through 39-2-14 of the Code of Alabama. AGO 2015-019

Solid Waste Disposal: The county commission may deposit proceeds from the sale of carbon credits generated from the destruction of methane at the landfill into the general fund. AGO 2015-020

Ad Valorem Taxes: The new owner of property, who is tax exempt, would be responsible for the roll-back charges expressed in section 40-7-25.3 of the Code of Alabama in the property in question was not being used exclusively for charitable purposes as of the October 1 next succeeding conversion of the property. Even though the developer changed the current use of Portion "B" in November 2013, it is the owner of property as of October 1 who is responsible

for the ad valorem taxes levied on a particular parcel of land. Section 40-7-25.3 of the Code authorizes a tax assessor to apportion an assessment to a particular parcel of land. Accordingly, the amount assessed in ad valorem taxes should stand alone as to Portion "B." AGO 2015-021

Property: The purchase of a temporary or permanent easement or right-of-way with public funds is subject to public disclosure under section 9-15-100 of the Code of Alabama. The purchase of same without public funds is not subject to disclosure. The acquisition by purchase, but not by condemnation, in eminent domain, of land in fee simple or a temporary or permanent easement or right-of-way, is subject to public disclosure. Disclosure is not required if the decision to purchase was made at an open meeting of the purchasing entity for which notice was given under the Open Meetings Act and the minutes include the information required by section 9-15-100(b). AGO 2015-024

Courts: The court referral program constitutes a "drug rehabilitation program" under section 13A-12-284 of the Code of Alabama such as would justify reducing the Demand Reduction Assessment act penalty by the amount paid by the defendant to the court referral program for monitoring and drug screens. AGO 2015-026 ■



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ALM Welcomes Nathan Baker

Senior Software Developer



Originally from the North Carolina mountains, Nathan has been writing web-based software for nearly two decades and spent 12 years as a software developer in the Raleigh/Durham/Chapel Hill area's Research Triangle Park before relocating to Alabama. He is a graduate of Mars Hill University where he was a ski instructor, played golf for the university and received a BS in Computer Science. Nathan's a huge fan of both Alabama and the Carolina Tar Heels and loves spicy food, hot peppers and hot sauce (even sauces that come with a warning label). He and his wife, Tina, have two children and live in Montgomery.



PASSPORT PRIZE PROGRAM at the 2015 Annual Convention EXPO

The League will again offer the fun-filled opportunity for our members and vendors during the 2015 EXPO. Our Passport Prize Program, which was a huge success in its inaugural year, is uniquely designed to give convention delegates the opportunity to speak more directly with participating vendors during convention EXPO hours (May 17-18) as well as the chance to win a prize during the Tuesday morning closing general session.

How it works: Passport Prize cards listing the names and booth numbers of participating vendors will be distributed to convention delegates during registration. **NOTE:** Only registered convention delegates – mayors, councilmembers, clerks, municipal personnel – are eligible to participate in this prize program. (Spouses and guests are not eligible).

Participating vendors will receive a customized stamp for use on Passport Prize cards. Once the vendor has determined that the delegate has spent sufficient time speaking with him/her, the vendor will stamp the area on the delegate's card that correlates with the vendor's name and booth number.

Participating vendors will be listed in printed convention material and there will be a designated area in the EXPO Hall for delegates to submit their stamped tickets. League staff will verify the eligibility of each submission. If the information is not complete, the card will not be accepted or entered into the drawing.

For more information on the 2015 EXPO, visit www.alalm.org.

Prizes will be drawn on Tuesday, May 19, 2015, during the closing general session.

Delegates MUST be present to win.



2015 Convention Quick Guide

Tuscaloosa, Alabama • May 16-19

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All information subject to change. CMO credits can be earned.
See convention program for details.

Saturday, May 16

9:00 a.m. - 5:00 p.m. Registration: Bryant Conference Center
8:00 a.m. - 2:30 p.m. Municipal Clerks Conference: Hotel Capstone
11:00 a.m. **Resolutions Committee Meeting:** Bryant Conference Center
1:00 p.m. AMIC Annual Meeting, Bryant Conference Center
3:00 p.m. - 5:00 p.m. **OPENING SESSION:** Bryant Conference Center
Governor Bentley (invited), ALM President's Address, ACE Awards
5:30 p.m. - 6:30 p.m. ABC LEO Reception: Bryant Museum
8:00 p.m. City of Tuscaloosa Dessert Reception: Tuscaloosa Amphitheater

Sunday, May 17

7:30 a.m. Annual Municipal Golf Outing – Ol' Colony Golf Complex, 401 Old Colony Road, Tuscaloosa
8:00 a.m. or 11:00 a.m. Church of the Highlands: Bryant Conference Center
1:00 p.m. - 5:00 p.m. Registration: Bryant Conference Center
2:00 p.m. - 3:15 p.m. **Concurrent Sessions:** Bryant Conference Center and Hotel Capstone
What Community Development Programs Can Do for Your Municipality; What to Do When the
Feds Call – Is Your Municipality Compliant?; Grants 101 – How to Acquire Federal Funding for
Local Projects; Council/Manager Workshop
3:30 p.m. - 4:45 p.m. **Concurrent Sessions:** Bryant Conference Center and Hotel Capstone
Attracting and Retaining Retail Business; Handling Police and Public Interaction in a Post-
Ferguson Environment; Your Housing Authority and What It Can Do for You; Council/Manager
Workshop
5:30 p.m. - 7:30 p.m. **Exhibitors Showcase and Reception in the Expo Hall ***
University of Alabama Hank Crisp Indoor Facility

Monday, May 18

8:00 a.m. - 5:00 p.m. Registration: Bryant Conference Center
8:00 a.m. - 10:45 a.m. **Breakfast in the Expo Hall** (All convention registrants, spouses/guests and municipal clerks) *
University of Alabama Hank Crisp Indoor Facility
8:30 a.m. - 5:00 p.m. Alabama Association of Public Personnel Administrators, Hotel Capstone
11:00 a.m. - 3:15 p.m. **Roundtables by Population** (Lunch provided): Bryant Conference Center and Hotel Capstone
3:45 p.m. - 5:30 p.m. **ANNUAL BUSINESS SESSION:** Bryant Conference Center
6:00 p.m. Reception: Coleman Coliseum
7:15 p.m. **President's Banquet** followed by **Al Walker, Humorist:** Coleman Coliseum

Tuesday, May 19

8:00 a.m. - Noon Registration: Bryant Conference Center
8:30 a.m. - 10:00 a.m. **Ask Your Attorney Session:** Bryant Conference Center
10:15 a.m. - Noon **GENERAL CLOSING SESSION:** Bryant Conference Center
Coach Nick Saban; Joyce E. Brooks – Leadership Survival Skills for Overworked Civic
Leaders; Passport Prize Drawings *

Noon Adjourn

* **PASSPORT PRIZE PROGRAM:** The League will once again offer this popular program – a fun opportunity for our members and vendors during the 2015 EXPO. Our Passport Prize Program is uniquely designed to give convention delegates the opportunity to speak more directly with participating vendors during convention EXPO hours (May 17 and 18) as well as the chance to win a prize during the Tuesday morning closing general session. **Delegates MUST be present to win!** See convention program for additional details.

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