

1 HB139  
2 89736-5  
3 By Representative Lindsey  
4 RFD: County and Municipal Government  
5 First Read: 06-MAR-07  
6 PFD: 03/05/2007

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ENROLLED, An Act,

To amend Sections 11-1-8, 11-3-1, 11-3-2, 11-3-3, 11-3-7, 11-3-8, 11-3-18, 11-3-20, 11-3-21, 11-3-22, 11-8-3, 11-8-9, and 11-8-10, Code of Alabama 1975, relating to the creation and operation of county commissions to provide further for the election and appointment of county commissioners; to clarify existing provisions related to the term of office and first meeting of county commissions following an election; to establish a quorum for county commissions; to provide for the duties of the chair; to provide for the election and duties of a vice chair; to provide for the employment and duties of a chief administrative officer; to provide procedures for adopting the county budget; to make technical changes regarding the duties and procedures of county commissions; and to repeal Sections 11-3-6, 11-3-13, 11-3-19, 11-3-23, 11-3-24, 11-3-26, 11-8-7, 11-8-8, 11-8-13, and 11-8-14 of the Code of Alabama 1975.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 11-1-8, ~~11-1-9~~, 11-3-1, 11-3-2, 11-3-3, 11-3-7, 11-3-8, 11-3-18, 11-3-20, 11-3-21, 11-3-22, 11-8-3, 11-8-9, and 11-8-10, Code of Alabama 1975, are amended to read as follows:

"§11-1-8.

1           "The county commission of any county in the state of  
 2 Alabama may by resolution ~~authorize~~ close the offices of the  
 3 ~~officials of the county located in the county courthouse or~~  
 4 ~~other county buildings to be closed all day one weekday or any~~  
 5 ~~portion thereof of each week in addition to~~ on legal holidays  
 6 set pursuant to Section 1-3-8, or for special circumstances  
 7 deemed necessary or appropriate. ~~If such a resolution is~~  
 8 ~~adopted, notice thereof~~ Notice of the closing shall be posted  
 9 at the courthouse ~~door~~ and shall be published otherwise in  
 10 ~~such~~ the manner as the county commission may direct. In the  
 11 event that any documents required to be filed by a time  
 12 certain deadline cannot be filed in a timely manner due to the  
 13 closing of an office under this section, the deadline for  
 14 filing shall be extended to the date that the office is  
 15 reopened as provided in Section 1-1-4.

16           ~~"1-1-9.~~

17           ~~"(a) Any law to the contrary notwithstanding, the~~  
 18 ~~county commission of any county of the state of Alabama may,~~  
 19 ~~in its discretion, defray the costs of defending any lawsuit~~  
 20 ~~brought against any county official when such lawsuit is based~~  
 21 ~~upon and grows out of the performance by said the official of~~  
 22 ~~any duty in connection with his or her office and does not~~  
 23 ~~involve a willful or wanton personal tort or a criminal~~  
 24 ~~offense committed by the official. The expenses of defending~~  
 25 ~~such litigation may include witness fees, transportation, toll~~

1 ~~and ferry expenses of witnesses, attorney's fees, court costs,~~  
2 ~~and any other cost in connection with the defense of said the~~  
3 ~~litigation. The county commission shall not be responsible for~~  
4 ~~payment or reimbursement of any costs incurred by a public~~  
5 ~~official who brings an action against the county commission.~~

6 ~~"(b) If any county has expended money for the~~  
7 ~~purposes set out in subsection (a) of this section, such~~  
8 ~~expenditure is hereby validated and shall not be charged back~~  
9 ~~to the official making such payment nor shall the person who~~  
10 ~~received such payment be liable for any reimbursement of same.~~

11 ~~"§11-3-1.~~

12 ~~"(a) Any person who is a qualified elector of the~~  
13 ~~county and has resided in the county for at least one year~~  
14 ~~prior to the date upon which he or she would take office is~~  
15 ~~eligible to seek office as county commissioner. In counties~~  
16 ~~where the county commissioners represent a certain district,~~  
17 ~~any person seeking office as county commissioner shall be a~~  
18 ~~qualified elector of and reside within the district which he~~  
19 ~~or she seeks to represent upon election or appointment for at~~  
20 ~~least one year prior to the date that he or she would take~~  
21 ~~office. Notwithstanding the foregoing, the one-year residency~~  
22 ~~requirement provided above shall not apply to the first~~  
23 ~~election following any redistricting of county commission~~  
24 ~~districts in a county. Any person serving as county~~  
25 ~~commissioner, at all times while in office, shall meet the~~

1 qualified elector and residency requirements set out herein,  
2 and in the case of a district commissioner shall reside in the  
3 district as it existed at the time of his or her election.

4 "(b) Any Unless a local law authorizes a special  
5 election, any vacancy on the county commission shall be filled  
6 by appointment by the Governor. If the appointment occurs at  
7 least 30 days before the closing of party qualifying as  
8 provided in Section 17-16-11, the person appointed to the  
9 vacated office shall only serve until seven days after the  
10 next general election following the appointment as provided  
11 herein. The person so appointed to fill the vacancy shall meet  
12 the residency requirements in subsection (a), and shall hold  
13 office from the date of appointment until the eighth day  
14 following the next general election. If the original term in  
15 which the vacancy occurred would not have expired on the  
16 eighth day following the next general election after the  
17 appointment, the person elected at the election required by  
18 operation of this subsection shall serve for a period of time  
19 equal to the remainder of the term in which the vacancy was  
20 created. Thereafter, election for the county commission seat  
21 shall be as otherwise provided by law.

22 "~~(a)~~(c) Unless otherwise provided by local law, by  
23 court order, or governed by Section 11-80-12, and as otherwise  
24 provided in subsection ~~(b)~~(d), there shall be in every county  
25 a county commission, composed of the judge of probate, who

1 shall serve as chairman, and four commissioners, who shall be  
2 elected at the time prescribed by law and shall hold office  
3 for four years until their successors are elected and  
4 qualified.

5 ~~"(b)(d) Beginning with the next term of office for~~  
6 ~~each county commissioner, the term~~ Notwithstanding any other  
7 provision of law related to election canvassing,  
8 certification, or contest, the term of office for county  
9 commissioner shall commence at 12:00 a.m. on the second  
10 Wednesday following the general election at which he or she is  
11 elected and shall expire at 11:59 p.m. on the first Monday  
12 Tuesday following the day of the general election at which the  
13 successor to that office is elected. Thereafter each county  
14 commissioner shall hold office from 12:01 A.M. of the first  
15 Tuesday following his or her election and until his or her  
16 successor is elected and qualified. This subsection shall  
17 apply to all counties and may not be altered by local law.

18 ~~"(c)(e) Any other provision of law to the contrary~~  
19 ~~not withstanding, each~~ Each county commission shall meet on  
20 the ~~first Tuesday~~ Wednesday following the election and  
21 tabulation of provisional ballots pursuant to Section 17-10A-2  
22 of any one of its number members whose term commences on that  
23 day pursuant to ~~the provisions of~~ subsection ~~(b)(d), and at~~  
24 this meeting, shall establish the regular meeting days for the  
25 county commission as provided in Section 11-3-8. The meeting

1 shall be in lieu of any meeting of the county commission  
2 required by law to be held within the same calendar week and  
3 shall be in all respects and for all purposes a regular  
4 meeting of the county commission. The county commission shall  
5 not meet following the election of any one of its ~~number~~  
6 members until the meeting provided by this subsection, unless  
7 there is a declared emergency.

8 "An emergency may be declared for the purposes of  
9 this subsection upon a unanimous vote of the entire membership  
10 of the county commission.

11 "(f) Except as specifically provided in subsection  
12 subsections (a) (b) and (c), this section applies in all  
13 counties and may not be altered or amended by local law. Any  
14 existing local law or portion thereof in conflict with this  
15 section is specifically repealed to the extent of the conflict  
16 effective with the next election following the effective date  
17 of the act adding this subsection. It is the intent of the  
18 forgoing that a portion of a local law in direct conflict with  
19 this section shall be repealed, and any remaining portions of  
20 the local law not in conflict shall remain in full force and  
21 effect.

22 "§11-3-2.

23 "(a) Subject to the restrictions of Section 280 of  
24 the Constitution of Alabama of 1901, and the laws of this  
25 state, ~~one~~ any member of a county commission may be appointed

1 to and may serve on public boards, commissions, and  
2 authorities within this state unless ~~authorized~~ otherwise  
3 prohibited by law. Except where otherwise specifically  
4 authorized or required by general state or federal law, only  
5 one member from a particular county commission may serve on  
6 any particular public board, commission, or authority.

7 Notwithstanding the foregoing, this subsection shall not be  
8 interpreted to authorize a county commission to appoint a  
9 member to serve on the board of any authority, corporation, or  
10 association organized pursuant to Chapter 21 of Title 22  
11 unless the appointment is authorized in the articles of  
12 incorporation of the authority, corporation, or association.

13 "(b) All service on a board, commission, or  
14 authority by a member of a county commission prior to ~~December~~  
15 ~~7, 1999~~ the effective date of the act adding this language,  
16 meeting the requirements of subsection (a) and all actions  
17 taken by any member of a county commission acting in his or  
18 her official capacity on the board, commission, or authority  
19 are ratified and confirmed.

20 "(c) A member of a county commission shall not be  
21 reimbursed for expenses by both the public board, commission,  
22 authority, and the county commission on which he or she serves  
23 ~~, however, the.~~ The member may elect to be reimbursed from  
24 either the public board, commission, or authority, or the  
25 county commission.

1           "§11-3-3.

2           "Each member of the county commission of each county  
3 shall be required to give a bond as provided in Chapter 5 of  
4 Title 36 and Chapter 2 of Title 11, in the sum of at least  
5 ~~\$3,000.00~~ three thousand dollars (\$3,000) to be fixed by the  
6 county commission and approved by the judge of the circuit  
7 court of a circuit of which such county forms a part,~~and,~~  
8 ~~where.~~ When there are two or more circuit judges in ~~said the~~  
9 circuit, then ~~said the~~ bonds shall be fixed and approved by  
10 the ~~senior~~ presiding judge of ~~said the~~ circuit.

11           "§11-3-7.

12           ~~"The meetings of the county commission may be held~~  
13 ~~by the chairman of the county commission and two commissioners~~  
14 ~~or by three commissioners without the chairman, unless~~  
15 ~~otherwise provided by local law.~~ A majority of members serving  
16 on a county commission shall constitute a quorum. A judge of  
17 probate or chair elected countywide shall be considered a  
18 member of the county commission for purposes of determining a  
19 quorum. No ordinance, resolution, policy, or motion shall be  
20 voted on and approved by a county commission unless a quorum  
21 is present in the meeting chamber while the vote is taken and  
22 the matter is approved by an affirmative vote of the majority  
23 of the members present and voting, unless otherwise required  
24 by Alabama law.

25           "§11-3-8.

1           "(a) At the first county commission meeting held  
2 pursuant to Section 11-3-1 following each election of county  
3 commissioners, the county commission shall establish the day  
4 or days of each month on which regular meetings of the county  
5 commission shall be held. ~~The~~ A county commission, by  
6 resolution, may alter the regular meeting days as necessary.  
7 The regular meeting days and the time and place where the  
8 meetings will be held shall at all times be posted in a public  
9 and conspicuous location in the courthouse and in other public  
10 buildings determined appropriate by the county commission and  
11 shall be forwarded to all local news media who have on file  
12 with the county commission a written request for notification  
13 of the schedule of regular meetings of the county commission.

14           "(b) ~~The~~ A county commission may schedule a special  
15 meeting when determined necessary in writing by a majority of  
16 the members of the commission, or in case of an emergency,  
17 upon call of the chair. The purpose for and agenda of the  
18 meeting shall be included in all public notices of the  
19 meeting, and no other items shall be considered at the special  
20 meeting. Upon scheduling, except in an emergency, at least  
21 five days prior to the special meeting, notice of the meeting  
22 time, place, and agenda shall be posted in a public and  
23 conspicuous location in the courthouse and in other public  
24 buildings determined appropriate by the county commission and  
25 shall be forwarded to all local news media who have on file

1 with the county commission a written request for notification  
 2 of special meetings of the county commission.

3 "(c) When a regular meeting day of a county  
 4 commission falls on a legal public holiday, the county  
 5 commission may meet on any day of the following week instead  
 6 of on the holiday, or at another time determined by the county  
 7 commission, provided that at least five days prior to the  
 8 meeting, notice of the meeting time and place shall be posted  
 9 in a public and conspicuous location in the courthouse and in  
 10 other public buildings determined appropriate by the county  
 11 commission and shall be forwarded to all local news media who  
 12 have on file with the county commission a written request for  
 13 notification of the schedule of regular meetings of the county  
 14 commission.

15 "(d) All meetings scheduled and held as provided  
 16 herein shall be deemed to be in compliance with the notice  
 17 provisions of Chapter 25A of Title 36.

18 "§11-3-18.

19 "~~The chairman of the A county commission may employ~~  
 20 a chief administrative officer, who shall carry out the  
 21 administrative duties of the county and shall perform all of  
 22 the following duties: must record the proceedings at

23 "(1) Keep and record minutes of all meetings of the  
 24 county commission, make all necessary orders and issue all

1 ~~process necessary to sustain its jurisdiction or maintain its~~  
2 ~~authority.~~

3 "(2) Have prepared and presented to the commission  
4 chair for proper execution all appropriate documents, such as  
5 resolutions, orders, contracts, or directives, as are  
6 necessary to carry out the actions of the county commission.

7 "(3) Maintain at all times a detailed record of the  
8 financial status of the county which shall be kept up to date  
9 at all times and shall reflect the true status of all  
10 outstanding obligations of the county and the estimated  
11 revenue for the current fiscal year.

12 "(4) Perform any other duties with reference to  
13 accounting, auditing claims, issuing warrants, and supplying  
14 the county commission with information as the county  
15 commission may deem necessary for the administration of the  
16 financial affairs of the county.

17 "(5) Serve as signatory for the county on all  
18 appropriate documents as authorized or directed by policy  
19 adopted by resolution of the county commission.

20 "(6) Perform any other duties as may be assigned  
21 from time to time and under procedures established by the  
22 county commission.

23 "§11-3-20.

24 ~~"(a) Unless otherwise provided by local law, the~~  
25 ~~chairman~~ The chair of the county commission shall preside over

1 county commission meetings, provided however, ~~the chairman may~~  
2 ~~appoint another member of the county commission to preside in~~  
3 ~~his absence unless the county commission directs otherwise. In~~  
4 ~~all matters where the county commission is divided, the same~~  
5 ~~must be determined by the chairman of the county commission~~  
6 the county commission may elect or authorize the chair to  
7 appoint a vice chair to serve in his or her absence. The chair  
8 shall only vote on a matter in the event that the votes cast  
9 by the other members of the commission are evenly divided on  
10 the issue except, when the chair serves on the county  
11 commission as a district commissioner, he or she may vote once  
12 on all matters that come before the county commission.

13 "(b) In addition to presiding over all meetings set  
14 out in subsection (a), the chair of a county commission, or in  
15 his or her absence or at his or her request, the vice chair,  
16 shall have the following duties:

17 "(1) To ensure that an accurate record of all  
18 meetings is made and kept as required by Section 11-3-18.

19 "(2) Except where the chief administrative officer  
20 has been directed to serve pursuant to Section 11-3-18(e), to  
21 serve as signatory for the county commission on all  
22 appropriate documents, such as resolutions, orders, contracts,  
23 or directives, as are necessary to carry out the actions of  
24 the county commission.

1           "(3) To oversee and supervise the upkeep of the  
2 financial records of the county.

3           "(4) Except as provided in Section 11-8-9, to issue  
4 and sign all warrants.

5           "(5) To perform other duties as required by law or  
6 determined appropriate by the county commission pursuant to  
7 resolution duly adopted by a majority of the members of the  
8 county commission.

9           "§11-3-21.

10           ~~"The~~ As soon as practical after closing the fiscal  
11 year, but no later than December 31 of each year, the county  
12 commission shall make a semiannual publication on April 1 and  
13 October 1 of each year have published in a newspaper of  
14 general circulation published in the county of an itemized  
15 report, showing the receipts and expenditures of money for the  
16 county, specifying particularly the sources from which  
17 received and the purposes for which expended. Said publication  
18 must also show the entire indebtedness of the county of  
19 whatever kind and character, specifying particularly the  
20 amount of bonds outstanding, their character and when due, the  
21 amount of the outstanding warrants whether interest-bearing or  
22 not and, if interest-bearing, the rate of interest for which  
23 said warrants were issued and when due and payable. The  
24 compensation to be paid for the publication provided for in  
25 this section shall not exceed one and one-half cents per word

1 ~~in counties of less than 40,000 population. a statement of the~~  
 2 ~~county's financial status for the 12-month period ending on~~  
 3 ~~September 30 of that year, which statement shall include at a~~  
 4 ~~minimum all of the following: (1) ~~The~~ An itemized report of~~  
 5 ~~the county's receipts by source and disbursements by functions~~  
 6 ~~or purposes or both. (2) The outstanding indebtedness of the~~  
 7 ~~county of any kind or character. (3) The schedule by years for~~  
 8 ~~retiring indebtedness, separating funded indebtedness from~~  
 9 ~~unfunded indebtedness. (4) The resources available to pay~~  
 10 ~~unfunded indebtedness.~~

11 "§11-3-22.

12 "If the county commission ~~shall fail~~ fails to make  
 13 the ~~said~~ publication ~~as~~ required by ~~section~~ Section 11-3-21,  
 14 ~~each member composing said county commission who votes against~~  
 15 ~~said publication is made subject to a penalty of \$50.00 to be~~  
 16 ~~collected by civil action, and the district attorney shall~~ may  
 17 bring ~~said~~ a civil action ~~and prosecute the same in the name~~  
 18 ~~of the county as plaintiff~~ to compel compliance, and the court  
 19 may assess all costs of court to the county.

20 "§11-8-3.

21 "(a) It shall be the duty of the county commission,  
 22 at some meeting in September of each calendar year, ~~but~~ or not  
 23 later than ~~its first meeting in October~~ 1 following, to  
 24 prepare and adopt a budget for the fiscal year beginning on  
 25 October 1 of the current calendar year which shall include all

1 of the following: (1) An an estimate of the income anticipated  
 2 revenue of the county for the fiscal year beginning on October  
 3 1 of the current calendar year for all public funds under its  
 4 supervision and control including all unexpended balances as  
 5 provided in Section 11-8-6, and to. (2) An estimate for the  
 6 same fiscal year the expense of expenditures for county  
 7 operations and to appropriate. (3) Appropriations for the  
 8 various purposes the respective amounts that are to be used  
 9 for each of such purposes; provided, that the.

10 "(b) The appropriations so made in the budget shall  
 11 not exceed the estimated total income revenue of the county  
 12 available for appropriations.

13 "(c) The budget adopted, at a minimum, shall include  
 14 any revenue required to be included in the budget under the  
 15 provisions of Alabama law and reasonable expenditures for the  
 16 operation of the offices of the judge of probate, tax  
 17 officials, sheriff, county treasurer, the county jail, the  
 18 county courthouse, and other offices as required by law.

19 "(d) In order that such the budget adopted is based  
 20 upon an estimate of income revenue and operating expenses may  
 21 be expenditures as nearly correct as possible, at least 60  
 22 days before the meeting of the county commission at which the  
 23 county budget is adopted:

24 "(1) the county commission shall call upon any  
 25 public official who handles any incoming moneys, Any public

1 official who receives public funds, including any official  
2 entitled to ex officio fees, or who issues any kind of order  
3 payable out of the county treasury without approval of such  
4 county commission ~~to~~ shall furnish them to the county  
5 commission in writing an estimate of ~~such income~~ the revenue  
6 and of the ~~probable amount of orders~~ anticipated expenditures  
7 ~~he~~ the official will be called upon to ~~issue~~ make during ~~such~~  
8 the next fiscal year ~~and it shall be the duty of such official~~  
9 ~~to furnish such estimates without delay.~~

10 "(2) The judge of probate, tax officials, sheriff,  
11 county treasurer, and any other county official or employee  
12 named by the county commission shall prepare and submit to the  
13 county commission an itemized estimate of the amount the  
14 official or employee believes to be necessary for personnel,  
15 office supplies, and other expenditures during the following  
16 fiscal year. Any official entitled to ex officio fees shall  
17 include in his or her estimate the estimated amount of any ex  
18 officio fees the official will receive during the following  
19 fiscal year.

20 "(e) Based upon the estimated revenue and  
21 expenditures set out in subsection (d), together with any  
22 other financial information available to the county commission  
23 regarding the anticipated revenue and expenditures for the  
24 next fiscal year, the county commission shall approve a budget

1 which includes the expenditures it deems proper for the next  
2 fiscal year.

3 "(f) Following the adoption of the budget, no  
4 obligation incurred by any county official or office over and  
5 above the amount or amounts approved and appropriated by the  
6 county commission shall be an obligation of the county unless  
7 the obligation is approved by an affirmative vote of a  
8 majority of the members of the county commission.

9 "(g) The budget may be amended during the fiscal  
10 year as determined necessary by affirmative vote of a majority  
11 of the members of the county commission. No amendment may  
12 authorize an expenditure which exceeds anticipated revenue of  
13 the county except as otherwise specifically authorized by  
14 general law.

15 "§11-8-9.

16 "No warrant shall be issued or check drawn on the  
17 county treasury or county depository by any person except as  
18 authorized by the chairman chair of the county commission or  
19 such other officer as may be designated by such county  
20 commission, unless otherwise provided by law, and officers who  
21 are authorized to pay claims which have not been first  
22 approved by the county commission shall issue orders for  
23 warrants or checks ~~which must be presented to the officer so~~  
24 ~~authorized to issue warrants payable out of the county~~

1 ~~treasury or county depository pursuant to procedures~~  
2 ~~established by the county commission.~~

3 "§11-8-10.

4 "No warrant or order for the payment of money shall  
5 be issued ~~in pursuance of~~ under authority of the county  
6 commission until funds are available for its payment upon  
7 presentation to the treasurer or depository pursuant to  
8 procedures established by the county commission. ~~It shall be~~  
9 ~~the duty of the county commission to provide and appropriate~~  
10 ~~funds for paying warrants issued upon orders drawn by other~~  
11 ~~county officials in pursuance of law, which orders are not~~  
12 ~~required by law to be approved and authorized by such board."~~

13 Section 2. Sections 11-3-6, 11-3-13, 11-3-19,  
14 11-3-23, 11-3-24, 11-3-26, 11-8-7, 11-8-8, 11-8-13, and  
15 11-8-14 of the Code of Alabama 1975, are repealed.

16 Section 3. This act shall become effective on the  
17 first day of the third month following its passage and  
18 approval by the Governor, or its otherwise becoming law.

