

1 HB475
2 164211-10
3 By Representatives Bandy and Forte (N & P)
4 RFD: Local Legislation
5 First Read: 23-MAR-16

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8 SYNOPSIS: This bill would further provide for the
9 operation of the council-manager form of government
10 in any Class 5 municipality organized under the
11 provisions of Act 71, 1977 Regular Session (Acts
12 1977, p. 78), as amended. The bill, among other
13 things, provides misdemeanor criminal penalties if
14 a member of the council violates provisions
15 relating to dealing with municipal services other
16 than through the city manager, provides for an
17 assistant city manager and a city planner, and
18 allows employment contracts only with the city
19 manager and not department heads.

20 Amendment 621 of the Constitution of Alabama
21 of 1901, now appearing as Section 111.05 of the
22 Official Recompilation of the Constitution of
23 Alabama of 1901, as amended, prohibits a general
24 law whose purpose or effect would be to require a
25 new or increased expenditure of local funds from
26 becoming effective with regard to a local
27 governmental entity without enactment by a 2/3 vote

1 unless: it comes within one of a number of
2 specified exceptions; it is approved by the
3 affected entity; or the Legislature appropriates
4 funds, or provides a local source of revenue, to
5 the entity for the purpose.

6 The purpose or effect of this bill would be
7 to require a new or increased expenditure of local
8 funds within the meaning of the amendment. However,
9 the bill does not require approval of a local
10 governmental entity or enactment by a 2/3 vote to
11 become effective because it comes within one of the
12 specified exceptions contained in the amendment.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

17
18 Relating to any Class 5 municipality organized under
19 the provisions of Act 71, 1977 Regular Session (Acts 1977, p.
20 78), as amended; to amend Act 71, 1977 Regular Session (Acts
21 1977, p. 78), as amended, to further provide for the operation
22 of the council-manager form of government; and in connection
23 therewith would have as its purpose or effect the requirement
24 of a new or increased expenditure of local funds within the
25 meaning of Amendment 621 of the Constitution of Alabama of
26 1901, now appearing as Section 111.05 of the Official

1 Recompilation of the Constitution of Alabama of 1901, as
2 amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. This act shall apply in any Class 5
5 municipality organized under the provisions of Act 71, 1977
6 Regular Session (Acts 1977, p. 78), as amended.

7 Section 2. Sections 1.01, 3.01, 3.10, 3.14, 3.18,
8 4.03, 4.04, 6.13, and 6.18 of Act 71, 1977 Regular Session
9 (Acts 1977, p. 78), as amended, are amended to read as
10 follows:

11 "Section 1.01. (a) Cities to which Act applies.—Any
12 city in the State of Alabama, which has a population of not
13 less than 23,000 nor more than 27,000 inhabitants according to
14 the 1970 or any subsequent federal decennial census, may adopt
15 the council-manager form of government by proceeding in the
16 manner hereafter in this Act provided.

17 "(b) The Legislature finds that the council-manager
18 form of government has been adopted pursuant to this act and
19 is operative in a Class 5 municipality. It is the intent of
20 this act to further provide for the council-manager form of
21 government under this act.

22 "Section 3.01. (a) Number, election, term.—The
23 council shall have five members with two elected at-large by
24 all of the voters of the city and three elected from districts
25 by voters within each district, the council elected in the
26 manner prescribed in Section 1.07 of this Act. An election of
27 councilmen shall be held on the ~~first Tuesday in September~~

1 ~~every three years~~ the date provided by general law. Each
2 councilman shall hold office for ~~three years~~ terms as provided
3 by general law, but shall serve until his or her successor
4 shall have qualified. A councilman may succeed himself or
5 herself in office. Each of the three district councilmen shall
6 reside within the limits of his or her district during the
7 term of his or her office and if any district councilman shall
8 remove from within the limits of his or her district for 60
9 consecutive days his or her office shall become vacant.

10 "(b) Any member of the council shall attain Basic
11 Certified Municipal Officials Certification through the
12 Alabama League of Municipalities within 30 months of taking
13 office.

14 "Section 3.10. Council not to interfere in
15 appointments or removals.

16 "(a) Neither the council nor any of its members
17 shall direct or request the appointment of any person to, or
18 his or her removal from, office by the city manager or by any
19 of his or her subordinates, or in any manner take part in the
20 appointment or removal of officers and employees in the
21 administrative service of the City. Except for the purpose of
22 inquiry, the council and its members shall deal with the
23 administrative service solely through the city manager and
24 neither the council nor any member thereof shall give orders
25 to any subordinates of the city manager, either publicly or
26 privately.

1 "(b) Any council member who violates subsection (a)
2 shall be punished as follows:

3 "(1) On the first offense, upon conviction, the
4 council member shall be guilty of a Class B misdemeanor
5 punishable as provided by law.

6 "(2) Upon conviction of a second offense, the
7 council member shall be guilty of a Class A misdemeanor
8 punishable as provided by law.

9 "(c) Any complaint regarding a violation of
10 subsection (a) shall be referred by the city manager and city
11 attorney to the district attorney for investigation.

12 "Section 3.14. Induction of council into office;
13 meetings of council.—The first meeting of each newly elected
14 council for induction into office shall be held at ten o'clock
15 in the morning on the first Monday in ~~October~~ November next
16 following its election, after which the council shall meet
17 regularly at such times as may be prescribed by its rules, but
18 not less frequently than once each month. All meetings of the
19 council shall be open to the public.

20 "Section 3.18. Granting of franchises.—~~No~~ Subject to
21 any state law applicable to all municipalities or any federal
22 law that provides otherwise, no resolution or ordinance,
23 granting to any person, firm, or corporation any franchise,
24 lease, or right to use the streets, public highways,
25 thoroughfares, or public property of the City, either in,
26 under, upon, along, through, or over same shall take effect
27 and be enforced until thirty days after the final enactment of

1 same by the council and publication of ~~said~~ the resolution or
2 ordinance in full once a week for three consecutive weeks in
3 some newspaper published in ~~said~~ the City, which publication
4 shall be made at the expense of the persons, firm, or
5 corporation applying for ~~said~~ the grant. Pending the passage
6 of any such resolution or ordinance or during the time
7 intervening between its final passage, and the expiration of
8 the thirty days during which publication shall be made as
9 above provided, the legally qualified voters of ~~said~~ the City
10 may, by written petition or petitions addressed to ~~said~~ the
11 council object to such grant, and if during such period such
12 written petition or petitions signed by at least five percent
13 ~~(5%)~~ of the legally qualified voters of the City shall be
14 filed with ~~said~~ the council, ~~said~~ the council shall forthwith
15 order an election, which shall be conducted by the election
16 commission of the City or other body having charge of the
17 conduct of municipal elections of the City at which election
18 the legally qualified voters of ~~said~~ the City shall vote for
19 or against the proposed grant. In the call for ~~said~~ the
20 election, the ~~said~~ the resolution or ordinance making such
21 grant shall be published one time at length and in full at the
22 expense of the City in a newspaper published in ~~said~~ the City.
23 If a majority of the votes cast at such election shall be
24 against the proposed grant, then and in those events, ~~said~~ the
25 resolution or ordinance shall not become effective nor shall
26 it confer any rights, powers, or privileges of any kind;
27 otherwise, ~~said~~ the resolution or ordinance and ~~said~~ the grant

1 shall thereupon become effective as fully and to the same
2 extent as if ~~said~~ the election had not been called or held.
3 If, as the result of ~~said~~ the election, ~~said~~ the resolution or
4 ordinance shall be disapproved, then it shall be deemed null
5 and void. But if as a result of ~~said~~ the election the proposed
6 grant shall be approved, the council shall adopt a resolution
7 stating the fact of such approval, and such resolution shall,
8 without further proceedings or advertisement, operate as the
9 adoption of the proposed grant. No grant of any franchise or
10 lease or right of user, or any other right in, under, upon,
11 along, through, or over the streets, public highways,
12 thoroughfares, or public property of any such City, shall be
13 made or given nor shall any such rights of any kind whatever
14 be conferred upon any person, firm, or corporation, except by
15 a resolution or ordinance duly passed by the council at some
16 regular or adjourned meeting and published as above provided
17 for in this section; nor shall any extension or enlargement of
18 any such rights or powers previously granted be made or given
19 except in the manner and subject to all conditions herein
20 provided for as to the original grant of same. It is expressly
21 provided, however, that the provisions of this section shall
22 not apply to the grant of side track or switching privileges
23 to any railroad or street car company for the purpose of
24 reaching and affording railway connections, and switch
25 privileges to the owners or users of any industrial plant,
26 store, or warehouse; provided further that ~~said~~ the side track
27 or switch shall not extend for a greater distance than one

1 thousand, three hundred twenty feet, measured along ~~said~~ the
2 track or switch.

3 "Section 3.20. Examination of books and publication
4 of accounts.-The council shall each month make available in
5 the office of the city manager a detailed statement of all
6 receipts and expenses of the City, and a summary of its
7 proceedings during the preceding month. At the end of each
8 year, the council shall cause a full and complete examination
9 of all the books and accounts of the City to be made by a
10 qualified public accountant, and shall cause the result of
11 such examination to be placed in the office of the city clerk
12 and the office of the city manager, to be open for inspection
13 by all persons. Such examination shall not be made more than
14 ~~two~~ four years in succession by the same accountant or firm.

15 "Section 4.03. The assistant city manager. Absence
16 of city manager.-~~To~~ There shall be employed an assistant city
17 manager. The assistant city manager shall perform his the
18 duties of the city manager during his the temporary absence or
19 temporary disability,~~the manager may designate by letter~~
20 ~~filed with the city clerk a qualified administrative officer~~
21 ~~of the city. In the event of failure of the manager to make~~
22 ~~such designation, the~~ of the city manager. The council may by
23 resolution appoint a qualified administrative officer of the
24 City to perform the duties of the city manager ~~until he shall~~
25 ~~return or his disability shall cease~~ in the event of the
26 temporary absence of the city manager and the assistant city
27 manager.

1 "Section 4.04. Administrative ~~department~~
2 departments.-(a) There shall be a department of finance, and
3 such other departments as may be established by ordinance upon
4 the recommendation of the manager. In addition, the position
5 of city planner shall be established.

6 "(b) Prior to any employee disciplinary action, the
7 city manager shall consult with the city attorney if possible.

8 "(c) The council may enter into an employment
9 contract only with the city manager. Any other department head
10 shall receive a six month severance package if the department
11 head is removed without cause.

12 "Section 6.13. Competitive bidding.~~Before the city~~
13 ~~makes any purchase of supplies, materials or equipment,~~
14 ~~costing \$1,500 or more, ample opportunity shall be given for~~
15 ~~competitive bidding, under such rules and regulations, and with~~
16 ~~such exceptions, as the council may prescribe by ordinance;~~
17 ~~provided, however, that the council shall not except~~
18 ~~individual purchases or sales from the requirement of~~
19 ~~competitive bidding.~~All rules relating to a competitive
20 bidding adopted by the council shall meet the minimum
21 requirements of Title 41 of the Code of Alabama 1975.

22 "Section 6.14. ~~Contracts for city improvements.~~ Any
23 ~~city improvement costing more than \$1,500 shall be executed by~~
24 ~~contract. All such contracts for more than \$1,500 shall be~~
25 ~~awarded to the lowest responsible bidder after such public~~
26 ~~notice and competition as may be prescribed by ordinance,~~
27 ~~provided the city manager shall have the power to reject all~~

1 ~~bids and advertise again. Alterations of any contract may be~~
2 ~~made when authorized by the council upon the written~~
3 ~~recommendation of the city manager. The council shall adopt~~
4 ~~standards for competitive bids under this act. All standards~~
5 ~~shall meet the minimum requirements of Title 41 of the Code of~~
6 ~~Alabama 1975."~~

7 Section 3. Although this bill would have as its
8 purpose or effect the requirement of a new or increased
9 expenditure of local funds, the bill is excluded from further
10 requirements and application under Amendment 621, now
11 appearing as Section 111.05 of the Official Recompilation of
12 the Constitution of Alabama of 1901, as amended, because the
13 bill defines a new crime or amends the definition of an
14 existing crime.

15 Section 4. With the exception of the amendment of
16 Section 3.10. Council not to interfere in appointments or
17 removals, which shall be effective commencing on the next term
18 of office of the city council, the remainder of this act shall
19 be effective immediately upon its approval by the Governor, or
20 its otherwise becoming law.