

The Alabama Limited Self-Governance Act

§ 11-3A-1 -- Short title.

This chapter shall be known as "The Alabama Limited Self-Governance Act."

§ 11-3A-2 -- Powers for public welfare, health, and safety; authorization; scope.

(a) Except where otherwise specifically prohibited or provided for either heretofore or hereafter by general law or the constitution of this state and subject to the procedures and limitations set out in this chapter, the county commission of a county may provide for its property and affairs; and for the public welfare, health, and safety of the citizens throughout the unincorporated areas of the county by exercising certain powers for the protection of the county and public property under its control. The powers granted herein to provide for the public welfare, health, and safety of its citizens shall only include the following:

- (1) Abatement of weeds as a public nuisance as defined in Section 11-67-60.
- (2) Subject to the provisions of Section 6-5-127, control of animals and animal nuisances.
- (3) Control of litter as defined in subsection (b) of Section 13A-7-29, or rubbish as defined in subdivision (4) of Section 22-27-2.
- (4) Junkyard control of areas which create a public nuisance because of an accumulation of items described in the definition of a junkyard under Section 11-80-10.
- (5) Subject to the provisions of Section 6-5-127, abatement of noise, unsanitary sewage, or pollution creating a public nuisance as defined in Sections 6-5-120 and 6-5-121.

(b) Except as provided in subsection (h), the process for implementation of the powers set out in subsection (a) may be authorized by resolution of the majority of the county commission or in response to a petition signed by 10 percent of the total number of qualified electors of the county who reside in the unincorporated areas of the county. A petition shall only be accepted if signed by 10 percent of the total number of qualified electors who reside in the unincorporated areas of the county. The petition shall include the full legal names and addresses of all persons signing the petition and shall be filed in the office of the judge of probate. The judge of probate shall within 60 days verify that all of the persons signing the petition are in fact qualified electors and legal residents of the unincorporated areas of the county and shall immediately thereafter forward the petition to the chairperson of the county commission. Following receipt of the verified petition, the county commission shall, at its next regularly scheduled meeting, make preparations for the referendum on the issue as set out in Section 11-3A-5.

(c) The powers granted to a county commission by this chapter shall not be construed to extend to any matters which the Legislature by general law has heretofore preempted by operation of law and the powers granted by this chapter shall not be limited or superseded by local law enacted after May 26, 2005. The legislative intent of this chapter is not to diminish any local law previously enacted and such local laws are to be read in pari materia with this chapter. The county commission may adopt ordinances to effectuate the orderly implementation of the powers granted herein under the procedures set out in Section 11-3A-3. Ordinances adopted by the county commission shall provide a process for notice to any persons cited for violation of such ordinance, and shall also include procedures for appeal to the county commission to contest any citation issued for an alleged violation of any ordinance adopted by the county commission pursuant to this chapter.

(d) The powers granted to a county commission by this chapter shall not include any of the following:

- (1) The authority of a county to levy or collect any tax, to levy or collect any fee except an administrative fee as provided in this chapter, or to implement a county land use plan or to establish and enforce planning and zoning.
- (2) Any action extending the power of regulation over any business activity regulated by the federal Surface Transportation Board, the Public Service Commission, the Department of

Agriculture and Industries, or the Department of Environmental Management beyond that authorized by general law or by the Constitution of Alabama of 1901.

(3) Any action affecting any court or the personnel thereof.

(4) Any action affecting any public school system.

(5) Any action affecting pari-mutuel betting or any pari-mutuel betting facility.

(6) Any action affecting in any manner the property, affairs, boundaries, revenues, powers, obligations, indebtedness, or government of a municipality or any municipal or public corporation organized pursuant to Chapter 50 of this title.

(7) Any action affecting the private or civil law governing private or civil relationships, except as is incident to the exercise of an independent governmental power.

(8) Any action extending the power of regulation over the construction, maintenance, operation, or removal of facilities used in the generation, transmission, or distribution of water, sewer, gas, telecommunications, or electric utility services.

(9) Any action affecting the rights granted to an agricultural, manufacturing, or industrial plant or establishment, or farming operation pursuant to Section 6-5-127, or other general laws in effect on May 26, 2005, or thereafter.

(10) Any action affecting or enforcing environmental easements or, except as authorized in this section, to abate a public nuisance, any use of private property otherwise authorized under the constitution and laws of the State of Alabama.

(11) Any action restricting or regulating surface mining or underground mining activities that have been granted federal or state permits and any operation or facility engaged in the activities of processing or distributing any product or material resulting from the mining activity.

(e) Unless otherwise provided by general law, a county may not exercise any of the powers or provide any service authorized by this chapter inside the corporate limits of any municipality or within any other territory in which a municipality or an instrumentality of a municipality is authorized by general law to exercise the power or provide those services, or within any other county, except by contract with the municipality, municipal instrumentality, or county affected.

(f) Nothing in this chapter shall be construed to grant the county commission of a county any general authority to establish or adopt a comprehensive plan for zoning or land use regulation in the unincorporated areas of the county or to grant any taxing authority except as otherwise provided for by law.

(g) This chapter shall not preclude municipal utilities from expanding into the county as otherwise provided by law and shall not grant counties the authority to govern or regulate municipal water and sewer systems which operate within the county.

(h) In counties with a Class 3 municipality with a county commission which is presided over by a chairman elected countywide, a four-fifths majority vote of the county commission members elected by single member districts shall be required for the implementation of this chapter by the commission pursuant to subsection (b) and Section 11-3A-6 and such four-fifths majority vote shall also be required on all matters related to the utilization of the powers granted under this chapter.

(i) Nothing in this chapter shall be construed to allow a county commission to expend any county funds for any improvement on private property.

§ 11-3A-3 -- Adoption procedures for ordinances; administrative fees; penalties.

(a) Following the notice requirements set out in subsection (b), the county commission, by majority vote, may adopt ordinances for the implementation and enforcement of the powers set out in Section 11-3A-2. The county commission, in its discretion, may hold a separate public hearing on the adoption of the proposed ordinances except the vote on approval of a proposed ordinance shall be taken only at a regularly scheduled county commission meeting and only following notice as set out in subsection (b).

The style of all ordinances shall be, "Be it ordained by the _____ County Commission as follows:" inserting the name of the county as the case may be.

All ordinances adopted by the county commission pursuant to this chapter shall be kept in a separate book maintained in the county commission office and on a county maintained website if one is available, and shall be available at all times for public inspection.

(b) Prior to the adoption of any ordinance pursuant to subsection (a), the county commission shall post notice of its intention to consider the adoption of the ordinance at the courthouse and at any other place it determines appropriate for a period of no less than 30 days. Notice shall also be published at least twice beginning three weeks prior to the county commission meeting at which the matter will be addressed in all newspapers published in the county that are authorized to publish legal advertisements. All notices shall state the date, time, and location of the meeting at which the proposed ordinance will be considered and shall advise where copies of all proposed ordinances may be obtained for review.

(c) Subject to any limitations set out in the constitution or the general laws of this state, the county commission may utilize the ordinance procedure in this section to establish administrative fees only for the purpose of administering the powers in subsection (a) of Section 11-3A-2, which shall not exceed the actual cost of the implementation and enforcement of any ordinance adopted under authority granted herein.

(d) The powers granted in this chapter shall not be construed to authorize any assessments, rates, charges, fees for services, or other similar monetary impositions not constituting taxes to be made or imposed against any person or property, unless the services related to the assessments, rates, charges, fees for services, or other similar monetary impositions may be provided to the person or the powers related thereto may be exercised with respect to the property.

(e) The county commission may establish and enforce administrative and civil penalties, including fines, for the enforcement of ordinances adopted under authority granted in this chapter. The fine shall not exceed one hundred fifty dollars (\$150). Each day the violation continues shall constitute a separate offense, however, the total fine shall not exceed five thousand dollars (\$5,000). The ordinances, including any penalties and fines, shall be adopted in accordance with the procedures set out in subsections (a) and (b). All fines and penalties collected shall be paid into the county general fund of the county and earmarked for the administration of the ordinances adopted pursuant to this chapter. Compliance may also be pursued through civil or equitable action filed in the circuit court of the county seeking injunctive relief or other appropriate remedy.

§ 11-3A-4 -- Alcoholic beverage licenses in Class 3 municipalities with elected county commission chair.

(a) This section shall apply to any county with a Class 3 municipality that has an elected county commission chair.

(b) All other provisions of law, rules, or regulations to the contrary notwithstanding, the Alabama Alcoholic Beverage Control Board may not issue in the unincorporated area of any applicable county any form of license, including, but not limited to, off-premise consumption licenses, restaurant licenses, or club licenses, for the retail sale of any form of intoxicating beverages, including, but not limited to, malt liquor, beer, wine, liquor, or other alcoholic beverage regulated by the board, unless one of the following requirements are satisfied:

- (1) The application has first been approved by the county commission.
- (2) The denial of approval by the county commission has been set aside by order of the circuit court of the county on the grounds that approval by the county commission was arbitrarily or capriciously denied without a showing of one of the following:
 - a. The creation of a nuisance.

- b. Circumstances clearly detrimental to or which would adversely affect the public health, safety, and welfare of the adjacent residential neighborhoods.
- c. A violation of applicable zoning restrictions or regulations.
- d. An individual applying for the license has a prior conviction involving the use of alcohol or a controlled substance.
- e. The proximity of the business to a school or child care facility and the business hours of the operation will create a harmful environment for the children.
- f. The traffic congestion created by licensing the proposed location will endanger others.
- g. Any other reason that poses a risk.

(c) A proceeding in the circuit court to review an action of the county commission denying approval of an application shall be an expedited de novo proceeding heard by a circuit judge without a jury who shall consider any testimony presented by the county commission and any new evidence presented in explanation or contradiction of the testimony. Any proceeding to review the denial of approval of a license application shall be commenced within 14 days of the action by the county commission and shall be set for hearing by the court within 30 days thereafter.

(d) Notwithstanding any other provision of law, the county commission may adopt ordinances regulating the location of retail licenses for the sale of alcoholic beverages.

§ 11-3A-5 -- Referendum election to approve application of powers.

The powers authorized under this chapter shall be effective in a county only after an affirmative vote of a majority of the qualified electors of the county residing in the unincorporated areas of the county and voting in a referendum election held on the question of whether the powers authorized under this chapter shall be effective in the county. Except as provided in subsection (h) of Section 11-3A-2, the election shall be called upon resolution adopted by affirmative vote of the majority of the members of the county commission. The referendum election shall be conducted in accordance with the election laws of the state and may be held only in conjunction with a primary, general, or special election held for another purpose in the county. In no case may any election authorized by this chapter be held more often than once every 48 months.

§ 11-3A-6 -- Referendum election to repeal application of powers.

Except as provided in subsection (h) of Section 11-3A-2, the county commission of a county shall call for a referendum election on the repeal of the application of the powers authorized under this chapter in the county following a resolution of the majority of the county commission or in response to a petition signed by 10 percent of the total number of qualified electors of the county who reside in the unincorporated areas of the county requesting that the application of the powers authorized under this chapter in the county be repealed. The procedures for calling and holding a referendum election provided in Section 11-3A-2 and Section 11-3A-4 shall also apply to a referendum election for the repeal of the application of the powers authorized under this chapter in the county.

§ 11-3A-7 -- Savings provision.

Act 562, 1953 Regular Session (Acts 1953, p. 799); Act 463, 1957 Regular Session (Acts 1957, p. 630); Act 716, 1957 Regular Session (Acts 1957, p. 1112); Act 87-758, 1987 Regular Session (Acts 1987, p. 1479); Act 89-527, 1989 Regular Session (Acts 1989, p. 1077); and Act 91-193, 1991 Regular Session (Acts 1991, p. 354), which are local acts applicable to Jefferson County only, shall remain in full force and effect following May 26, 2005, and shall constitute the exclusive regulatory authority to be exercised by the Jefferson County Commission in regard to any powers that would otherwise be granted in this chapter. Nothing authorizing the Jefferson County Commission to exercise any power in this chapter shall apply unless the local act named above relating to the power is specifically repealed by separate local act of the Legislature.