

1 SB129
2 72791-4
3 By Senators Barron, Figures, McClain, Penn, Little (T), Ross,
4 Denton, and Roberts
5 RFD: Economic Expansion and Trade
6 First Read: 01-FEB-05

1 SB129

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4 ENROLLED, An Act,

5 Relating to counties; to authorize the several
6 counties to exercise additional powers under certain
7 conditions; to provide for the approval of licenses to sell
8 alcoholic beverages of certain counties; and to provide that
9 this act would be effective in a county only upon approval at
10 a referendum in the county.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. This act shall be known as "The Alabama
13 Limited Self-Governance Act."

14 Section 2. (a) Except where otherwise specifically
15 prohibited or provided for either heretofore or hereafter by
16 general law or the constitution of this state and subject to
17 the procedures and limitations set out in this act, the county
18 commission of a county may provide for its property and
19 affairs; and for the public welfare, health, and safety of the
20 citizens throughout the unincorporated areas of the county by
21 exercising certain powers for the protection of the county and
22 public property under its control. The powers granted herein
23 to provide for the public welfare, health, and safety of its
24 citizens shall only include the following:

1 (1) Abatement of weeds as a public nuisance as
2 defined in Section 11-67-60, Code of Alabama 1975.

3 (2) Subject to the provisions of Section 6-5-127,
4 Code of Alabama 1975, control of animals and animal nuisances.

5 (3) Control of litter as defined in Section 13A-7-29
6 (b), Code of Alabama 1975, or rubbish as defined in Section
7 22-27-2 (4), Code of Alabama 1975.

8 (4) Junkyard control of areas which create a public
9 nuisance because of an accumulation of items described in the
10 definition of a junkyard under Section 11-80-10, Code of
11 Alabama 1975.

12 (5) Subject to the provisions of Section 6-5-127,
13 Code of Alabama 1975, abatement of noise, unsanitary sewage,
14 or pollution creating a public nuisance as defined in Sections
15 6-5-120 and 6-5-121, Code of Alabama 1975.

16 (b) Except as provided in subsection (h), the
17 process for implementation of the powers set out in subsection
18 (a) may be authorized by resolution of the majority of the
19 county commission or in response to a petition signed by 10
20 percent of the total number of qualified electors of the
21 county who reside in the unincorporated areas of the county. A
22 petition shall only be accepted if signed by 10 percent of the
23 total number of qualified electors who reside in the
24 unincorporated areas of the county. The petition shall include
25 the full legal names and addresses of all persons signing the

1 petition and shall be filed in the office of the judge of
2 probate. The judge of probate shall within 60 days verify that
3 all of the persons signing the petition are in fact qualified
4 electors and legal residents of the unincorporated areas of
5 the county and shall immediately thereafter forward the
6 petition to the chairperson of the county commission.
7 Following receipt of the verified petition, the county
8 commission shall, at its next regularly scheduled meeting,
9 make preparations for the referendum on the issue as set out
10 in Section 4.

11 (c) The powers granted to a county commission by
12 this act shall not be construed to extend to any matters which
13 the Legislature by general law has heretofore preempted by
14 operation of law and the powers granted by this act shall not
15 be limited or superseded by local law enacted after the
16 effective date of this act. The legislative intent of this act
17 is not to diminish any local law previously enacted and such
18 local laws are to be read in para materia with this act. The
19 county commission may adopt ordinances to effectuate the
20 orderly implementation of the powers granted herein under the
21 procedures set out in Section 3. Ordinances adopted by the
22 county commission shall provide a process for notice to any
23 persons cited for violation of such ordinance, and shall also
24 include procedures for appeal to the county commission to
25 contest any citation issued for an alleged violation of any

1 ordinance adopted by the county commission pursuant to this
2 act.

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

5 (1) The authority of a county to levy or collect any
6 tax, to levy or collect any fee except an administrative fee
7 as provided in this act, or to implement a county land use
8 plan or to establish and enforce planning and zoning.

9 (2) Any action extending the power of regulation
10 over any business activity regulated by the federal Surface
11 Transportation Board, the Public Service Commission, the
12 Department of Agriculture and Industries, or the Department of
13 Environmental Management beyond that authorized by general law
14 or by the Constitution of Alabama of 1901.

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

17 (4) Any action affecting any public school system.

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

20 (6) Any action affecting in any manner the property,
21 affairs, boundaries, revenues, powers, obligations,
22 indebtedness, or government of a municipality or any municipal
23 or public corporation organized pursuant to Chapter 50 of
24 Title 11 of the Code of Alabama 1975.

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

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

9 (9) Any action affecting the rights granted to an
10 agricultural, manufacturing, or industrial plant or
11 establishment, or farming operation pursuant to Section
12 6-5-127, Code of Alabama 1975, or other general laws in effect
13 on the effective date of this act or thereafter.

14 (10) Any action affecting or enforcing environmental
15 easements or, except as authorized in Section 2, to abate a
16 public nuisance, any use of private property otherwise
17 authorized under the Constitution and laws of the state of
18 Alabama.

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

24 (e) Unless otherwise provided by general law, a
25 county may not exercise any of the powers or provide any

1 service authorized by this act inside the corporate limits of
2 any municipality or within any other territory in which a
3 municipality or an instrumentality of a municipality is
4 authorized by general law to exercise the power or provide
5 those services, or within any other county, except by contract
6 with the municipality, municipal instrumentality, or county
7 affected.

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

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

19 (h) In counties with a Class 3 municipality with a
20 county commission which is presided over by a chairman elected
21 countywide, a four-fifths majority vote of the county
22 commission members elected by single member districts shall be
23 required for the implementation of this act by the commission
24 pursuant to subsection (b) of Section 2 and Section 5 and such
25 four-fifths majority vote shall also be required on all

1 matters related to the utilization of the powers granted under
2 this act.

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

6 Section 3. (a) Following the notice requirements set
7 out in subsection (b), the county commission, by majority
8 vote, may adopt ordinances for the implementation and
9 enforcement of the powers set out in Section 2. The county
10 commission, in its discretion, may hold a separate public
11 hearing on the adoption of the proposed ordinances except the
12 vote on approval of a proposed ordinance shall be taken only
13 at a regularly scheduled county commission meeting and only
14 following notice as set out in subsection (b). The style of
15 all ordinances shall be, "Be it ordained by the _____
16 County Commission as follows:" inserting the name of the
17 county as the case may be.

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

23 (b) Prior to the adoption of any ordinance pursuant
24 to subsection (a), the county commission shall post notice of
25 its intention to consider the adoption of the ordinance at the

1 courthouse and at any other place it determines appropriate
2 for a period of no less than 30 days. Notice shall also be
3 published at least twice beginning three weeks prior to the
4 county commission meeting at which the matter will be
5 addressed in all newspapers published in the county that are
6 authorized to publish legal advertisements. All notices shall
7 state the date, time, and location of the meeting at which the
8 proposed ordinance will be considered and shall advise where
9 copies of all proposed ordinances may be obtained for review.

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

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

1 (e) The county commission may establish and enforce
2 administrative and civil penalties, including fines, for the
3 enforcement of ordinances adopted under authority granted in
4 this act. The fine shall not exceed one hundred fifty dollars
5 (\$150). Each day the violation continues shall constitute a
6 separate offense, however, the total fine shall not exceed
7 five thousand dollars (\$5,000). The ordinances, including any
8 penalties and fines, shall be adopted in accordance with the
9 procedures set out in subsections (a) and (b) of Section 3 of
10 this act. All fines and penalties collected shall be paid into
11 the county general fund of the county and earmarked for the
12 administration of the ordinances adopted pursuant to this act.
13 Compliance may also be pursued through civil or equitable
14 action filed in the circuit court of the county seeking
15 injunctive relief or other appropriate remedy.

16 Section 4. This section shall apply to any county
17 with a Class III municipality that has an elected county
18 commission chair.

19 (a) All other provisions of law, rules, or
20 regulations to the contrary notwithstanding, the Alabama
21 Alcoholic Beverage Control Board may not issue in the
22 unincorporated area of any applicable county any form of
23 license, including, but not limited to, off-premise
24 consumption licenses, restaurant licenses, or club licenses,
25 for the retail sale of any form of intoxicating beverages,

1 including, but not limited to, malt liquor, beer, wine,
2 liquor, or other alcoholic beverage regulated by the board,
3 unless one of the following requirements are satisfied:

4 (1) The application has first been approved by the
5 county commission.

6 (2) The denial of approval by the county commission
7 has been set aside by order of the circuit court of the county
8 on the grounds that approval by the county commission was
9 arbitrarily or capriciously denied without a showing of one of
10 the following:

11 a. The creation of a nuisance.

12 b. Circumstances clearly detrimental to or which
13 would adversely affect the public health, safety, and welfare
14 of the adjacent residential neighborhoods.

15 c. A violation of applicable zoning restrictions or
16 regulations.

17 d. An individual applying for the license has a
18 prior conviction involving the use of alcohol or a controlled
19 substance.

20 e. The proximity of the business to a school or
21 child care facility and the business hours of the operation
22 will create a harmful environment for the children.

23 f. The traffic congestion created by licensing the
24 proposed location will endanger others.

25 g. Any other reason that poses a risk.

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

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

14 Section 5. The powers authorized under this act
15 shall be effective in a county only after an affirmative vote
16 of a majority of the qualified electors of the county residing
17 in the unincorporated areas of the county and voting in a
18 referendum election held on the question of whether the powers
19 authorized under this act shall be effective in the county.
20 Except as provided in subsection (h), the election shall be
21 called upon resolution adopted by affirmative vote of the
22 majority of the members of the county commission. The
23 referendum election shall be conducted in accordance with the
24 election laws of the state and may be held only in conjunction
25 with a primary, general, or special election held for another

1 purpose in the county. In no case may any election authorized
2 by this act be held more often than once every 48 months.

3 Section 6. Except as provided in subsection (h),
4 the county commission of a county shall call for a referendum
5 election on the repeal of the application of the powers
6 authorized under this act in the county following a resolution
7 of the majority of the county commission or in response to a
8 petition signed by 10 percent of the total number of qualified
9 electors of the county who reside in the unincorporated areas
10 of the county requesting that the application of the powers
11 authorized under this act in the county be repealed. The
12 procedures for calling and holding a referendum election
13 provided in Section 2 and Section 4 shall also apply to a
14 referendum election for the repeal of the application of the
15 powers authorized under this act in the county.

16 Section 7. Act 562, 1953 Regular Session (Acts 1953,
17 p. 799); Act 463, 1957 Regular Session (Acts 1957, p. 630);
18 Act 716, 1957 Regular Session (Acts 1957, p. 1112); Act
19 87-758, 1987 Regular Session (Acts 1987, p. 1479); Act 89-527,
20 1989 Regular Session (Acts 1989, p. 1077); and Act 91-193,
21 1991 Regular Session (Acts 1991, p. 354), which are local acts
22 applicable to Jefferson County only, shall remain in full
23 force and effect following the enactment of this act, and
24 shall constitute the exclusive regulatory authority to be
25 exercised by the Jefferson County Commission in regard to any

1 powers that would otherwise be granted in this act. Nothing
2 authorizing the Jefferson County Commission to exercise any
3 power in this act shall apply unless the local act named above
4 relating to the power is specifically repealed by separate
5 local act of the Legislature.

6 Section 8. This act shall become effective
7 immediately following its passage and approval by the
8 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB129

Senate 15-FEB-05

I hereby certify that the within Act originated in and passed the Senate.

McDowell Lee
Secretary

House of Representatives
Amended and passed 16-MAY-05

Senate concurred in House amendment 16-MAY-05

By: Senator Barron