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## Local Legislation

Each year the legislature is called upon to consider approximately 1,500 bills. The majority of the bills that pass will be local bills which generally apply to a particular place as one city or county as distinguished from general bills that apply to the state as a whole. In the 2008 regular session of the legislature, 205 bills passed (86 percent of those bills affected only one agency or local government). Because Alabama's constitution prohibits "home rule," local legislation cannot be passed by a county commission but must be state legislative act, in many instances by constitutional amendment. Because of this, the legislature spends much of its time dealing with issues that apply only to local matters.

The last several years the senate has been stalled over whether to consider gambling bills for facilities in Macon or Greene counties. The issue has been hotly debated over whether this was a "local" bill.

House Rule 39 provides that any bill dealing with pari-mutuel betting, gambling, etc. shall first be assigned to the appropriate local committees; then, upon approval, it will be assigned to the appropriate standing committee to be treated as any other local bill. Senate Rule 18 provides that all bills dealing with pari-mutuel betting or gambling or affecting an existing facility be assigned to the standing committee on "Tourism and Marketing."

# LEGISLATIVE WRAP-UP

Continued from page 221

Section 104 of the Alabama constitution states that the legislature shall not pass a special, private or local law on any of 31 various categories and prohibitions in §105 of the constitution. Local legislation is otherwise fair game.

The Alabama Supreme Court decision in the case of *Peddycoart v. City of Birmingham*, 354 So. 2d 808 (Ala. 1978) radically changed the way previous legislatures had passed local laws. Prior to *Peddycoart*, Alabama lawmakers enacted most local laws by a method termed “legislation by census.” Legislators avoided restrictions on local legislation contained in the 1901 Constitution which required in Article IV, Section 106 that all local bills be advertised for four consecutive weeks in a county-wide newspaper by utilizing census figures as a means of classifying an act. This permitted the legislature to bypass the constitutional requirements for local bills and directly handle detailed arrangements pertaining to local matters. A bill would be described as affecting all counties with population parameters 32,000 and 32,500 according to the prior census. As a result, such an act was considered a general act of local application for purposes of the constitution because the census population designations to which the act was attached were viewed as being prospective in operation and, thus, other localities could conceivably come within the provisions of the act reaching the specified population range.

On January 13, 1978, when the Alabama Supreme Court announced its *Peddycoart* decision, the legislature hurriedly proposed a constitutional amendment to validate all population-based acts prior to January 13, 1978 and established eight classes of municipalities. The categories are set forth in *Ala. Code* § 11-40-12 and based on the 1970 census. This legislation by categories has been upheld as constitutional. Now acts affecting cities in a class may be enacted as any other general law.

**Class 1:** All cities with a population of 300,000 inhabitants or more (Birmingham);

**Class 2:** All cities with a population of not less than 175,000 and not more than 299,999 inhabitants (Mobile);

**Class 3:** All cities with a population of not less than 100,000 and not more than 174,999 inhabitants (Huntsville and Montgomery);

**Class 4:** All cities with a population of not less than 50,000 and not more than 99,999 inhabitants (Gadsden and Tuscaloosa);

**Class 5:** All cities with a population of not less than 25,000 and not more than 49,999 inhabitants;

**Class 6:** All cities with a population of not less than 12,000 and not more than 24,999 inhabitants;

**Class 7:** All cities with a population of not less than 6,000 and not more than 11,999 inhabitants; and

**Class 8:** All cities and towns with a population of 5,999 inhabitants or less.

Historically, more local legislation has been enacted because consideration and passage of local legislation require comparatively less time and energy than other types of legislation. This is because members of the legislature observe the unwritten rule of legislative courtesy that implicitly binds legislators to support local legislation affecting a locality not within their own districts so long as it has the blessings and support of the member or members from the district which includes the affected locality. Prior to *Peddycoart*, legislative courtesy applied to general bills of local application as well as to specific local bills. Once a quorum of the legislative body is established the votes needed for passage is a majority of the votes cast. See

*Birmingham-Jefferson Civic Ctr. v. Birmingham*, 912 So.2d 204 (2005). (21 aye, 4 nay, 55 abstained).

Ordinarily, local legislation is passed in a perfunctory fashion without the time-consuming formalities of extended discussion or floor debate. The rules of the senate (Senate Rule 1) and the house (House Rule 6) both provide that uncontested local bills will be the first bills to be considered after introduction of bills, committee reports and resolutions. Before any legislation reaches the floor of either house, however, a legislation "bottleneck" develops as bills are reported out of committee and placed on the regular order calendar. The regular order calendar usually becomes so congested that few bills of statewide concern reach the floor until the Rules Committee of each house establishes a special order calendar as a means of enabling the more important bills to receive first consideration. Indeed, as the end of the legislative session draws to a close, the procedural device of unanimous consent allows non-controversial bills to be considered for legislative action out of the order in which they were placed on the regular order calendar. More often than not, local bills constitute the bulk of non-controversial bills which successfully work their way through this labyrinth of procedural devices to become enactments. The time-consuming part of local legislation is the advertising since bills must follow the strict requirements of the Alabama constitution.

Section 106 of the Alabama constitution requires that legislation proposed for enactment at a special session be advertised prior to that special session. The entire proposed bill may be advertised or the substance of the proposed act is published. No special, private or local bill shall be passed on any subject...unless the notice of the intention to apply shall have been published without cost to the state in a county or counties where the matter or thing to be affected

may be situated, which notice shall state the substance of the proposed law and be published at least once a week for four consecutive weeks in some paper published in the county or counties and that proof of the publication notice has been given must be certified by the clerk of the house or secretary of the senate that the notice and proof attached to the local legislation has been filed.

Historically, local laws have not been published in the *Code of Alabama*, which contained the "general and permanent laws" of the state. The *Code* commissioner, Jerry Bassett, in 2005 began systematically including local laws in Volume 45 of the *Code* beginning alphabetically with the counties. A copy of the "Local Laws" index is currently available from the Legislative Reference Service in Montgomery.

As this article went to press the legislature was one-third into the session, with 237 bills having passed the house of origin but only seven having been enacted, and none with statewide impact.

The budget shortages have predominated the session. The next *Alabama Lawyer* article will be devoted to a summary of the general bills.

## Annual Alabama Law Institute Meeting

The annual Law Institute meeting will be held Friday, July 17, 2009 in conjunction with the Alabama State Bar Annual Meeting in Point Clear.

