

1 HB520  
2 164211-4  
3 By Representative Vance (N & P)  
4 RFD: Local Legislation  
5 First Read: 21-APR-15

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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, would provide term limits for members of  
14 the council in the same office, provide criminal  
15 penalties if a member of the council violates  
16 provisions relating to dealing with municipal  
17 services other than through the city manager,  
18 provide criminal penalties for disclosures of  
19 matters discussed in an executive session, provide  
20 for an assistant city manager and a city planner,  
21 and allow employment contracts only with the city  
22 manager and not department heads.

23 Amendment 621 of the Constitution of Alabama  
24 of 1901, now appearing as Section 111.05 of the  
25 Official Recompilation of the Constitution of  
26 Alabama of 1901, as amended, prohibits a general  
27 law whose purpose or effect would be to require a

1 new or increased expenditure of local funds from  
2 becoming effective with regard to a local  
3 governmental entity without enactment by a 2/3 vote  
4 unless: it comes within one of a number of  
5 specified exceptions; it is approved by the  
6 affected entity; or the Legislature appropriates  
7 funds, or provides a local source of revenue, to  
8 the entity for the purpose.

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

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT  
20

21 Relating to any Class 5 municipality organized under  
22 the provisions of Act 71, 1977 Regular Session (Acts 1977, p.  
23 78), as amended; to amend Act 71, 1977 Regular Session (Acts  
24 1977, p. 78), as amended, to further provide for the operation  
25 of the council-manager form of government; and in connection  
26 therewith would have as its purpose or effect the requirement  
27 of a new or increased expenditure of local funds within the

1 meaning of Amendment 621 of the Constitution of Alabama of  
2 1901, now appearing as Section 111.05 of the Official  
3 Recompilation of the Constitution of Alabama of 1901, as  
4 amended.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

24 "Section 3.01. (a) Number, election, term.—The  
25 council shall have five members with two elected at-large by  
26 all of the voters of the city and three elected from districts  
27 by voters within each district, the council elected in the

1 manner prescribed in Section 1.07 of this Act. An election of  
2 councilmen shall be held on the ~~first Tuesday in September~~  
3 ~~every three years~~ the date provided by general law. Each  
4 councilman shall hold office for ~~three years~~ terms as provided  
5 by general law, but shall serve until his or her successor  
6 shall have qualified. A councilman may succeed himself or  
7 herself in office. Each of the three district councilmen shall  
8 reside within the limits of his or her district during the  
9 term of his or her office and if any district councilman shall  
10 remove from within the limits of his or her district for 60  
11 consecutive days his or her office shall become vacant.

12 "(b) Effective beginning the next term of office  
13 after the effective date of the act adding this subsection, no  
14 member of the council may hold the same office for more than  
15 two consecutive terms.

16 "(c) Any member of the council shall attain Basic  
17 Certified Municipal Officials Certification through the  
18 Alabama League of Municipalities within 30 months of taking  
19 office.

20 "Section 3.10. Council not to interfere in  
21 appointments or removals.

22 "(a) Neither the council nor any of its members  
23 shall direct or request the appointment of any person to, or  
24 his or her removal from, office by the city manager or by any  
25 of his or her subordinates, or in any manner take part in the  
26 appointment or removal of officers and employees in the  
27 administrative service of the City. Except for the purpose of

1 inquiry, the council and its members shall deal with the  
2 administrative service solely through the city manager and  
3 neither the council nor any member thereof shall give orders  
4 to any subordinates of the city manager, either publicly or  
5 privately.

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

8 "(1) On the first offense, upon conviction, the  
9 council member shall be guilty of a Class A misdemeanor  
10 punishable as provided by law.

11 "(2) Upon conviction of a second offense, the  
12 council member shall be guilty of a Class C felony punishable  
13 as provided by law and shall be removed from office.

14 "(c) Any person who attends an executive session of  
15 the council and thereafter violates the executive session  
16 privilege by divulging any part of a lawful discussion at the  
17 executive sessions, upon conviction, shall be guilty of a  
18 Class B misdemeanor punishable as provided by law. This  
19 subsection shall not apply to any enforcement action brought  
20 pursuant to Section 36-25A-9.

21 "(d) Any complaints regarding the above listed  
22 violations shall be referred by the city manager and city  
23 attorney to the district attorney for investigation.

24 "Section 3.14. Induction of council into office;  
25 meetings of council.—The first meeting of each newly elected  
26 council for induction into office shall be held at ten o'clock  
27 in the morning on the first Monday in ~~October~~ November next

1 following its election, after which the council shall meet  
2 regularly at such times as may be prescribed by its rules, but  
3 not less frequently than once each month. All meetings of the  
4 council shall be open to the public.

5 "Section 3.18. Granting of franchises. ~~No~~ Subject to  
6 any state law applicable to all municipalities or any federal  
7 law that provides otherwise, no resolution or ordinance,  
8 granting to any person, firm, or corporation any franchise,  
9 lease, or right to use the streets, public highways,  
10 thoroughfares, or public property of the City, either in,  
11 under, upon, along, through, or over same shall take effect  
12 and be enforced until thirty days after the final enactment of  
13 same by the council and publication of ~~said~~ the resolution or  
14 ordinance in full once a week for three consecutive weeks in  
15 some newspaper published in ~~said~~ the City, which publication  
16 shall be made at the expense of the persons, firm, or  
17 corporation applying for ~~said~~ the grant. Pending the passage  
18 of any such resolution or ordinance or during the time  
19 intervening between its final passage, and the expiration of  
20 the thirty days during which publication shall be made as  
21 above provided, the legally qualified voters of ~~said~~ the City  
22 may, by written petition or petitions addressed to ~~said~~ the  
23 council object to such grant, and if during such period such  
24 written petition or petitions signed by at least five percent  
25 (5%) of the legally qualified voters of the City shall be  
26 filed with ~~said~~ the council, ~~said~~ the council shall forthwith  
27 order an election, which shall be conducted by the election

1 commission of the City or other body having charge of the  
2 conduct of municipal elections of the City at which election  
3 the legally qualified voters of ~~said~~ the City shall vote for  
4 or against the proposed grant. In the call for ~~said~~ the  
5 election, the ~~said~~ the resolution or ordinance making such  
6 grant shall be published one time at length and in full at the  
7 expense of the City in a newspaper published in ~~said~~ the City.  
8 If a majority of the votes cast at such election shall be  
9 against the proposed grant, then and in those events, ~~said~~ the  
10 resolution or ordinance shall not become effective nor shall  
11 it confer any rights, powers, or privileges of any kind;  
12 otherwise, ~~said~~ the resolution or ordinance and ~~said~~ the grant  
13 shall thereupon become effective as fully and to the same  
14 extent as if ~~said~~ the election had not been called or held.  
15 If, as the result of ~~said~~ the election, ~~said~~ the resolution or  
16 ordinance shall be disapproved, then it shall be deemed null  
17 and void. But if as a result of ~~said~~ the election the proposed  
18 grant shall be approved, the council shall adopt a resolution  
19 stating the fact of such approval, and such resolution shall,  
20 without further proceedings or advertisement, operate as the  
21 adoption of the proposed grant. No grant of any franchise or  
22 lease or right of user, or any other right in, under, upon,  
23 along, through, or over the streets, public highways,  
24 thoroughfares, or public property of any such City, shall be  
25 made or given nor shall any such rights of any kind whatever  
26 be conferred upon any person, firm, or corporation, except by  
27 a resolution or ordinance duly passed by the council at some

1 regular or adjourned meeting and published as above provided  
2 for in this section; nor shall any extension or enlargement of  
3 any such rights or powers previously granted be made or given  
4 except in the manner and subject to all conditions herein  
5 provided for as to the original grant of same. It is expressly  
6 provided, however, that the provisions of this section shall  
7 not apply to the grant of side track or switching privileges  
8 to any railroad or street car company for the purpose of  
9 reaching and affording railway connections, and switch  
10 privileges to the owners or users of any industrial plant,  
11 store, or warehouse; provided further that ~~said~~ the side track  
12 or switch shall not extend for a greater distance than one  
13 thousand, three hundred twenty feet, measured along ~~said~~ the  
14 track or switch.

15 "Section 3.20. Examination of books and publication  
16 of accounts.—The council shall each month make available in  
17 the office of the city manager a detailed statement of all  
18 receipts and expenses of the City, and a summary of its  
19 proceedings during the preceding month. At the end of each  
20 year, the council shall cause a full and complete examination  
21 of all the books and accounts of the City to be made by a  
22 qualified public accountant, and shall cause the result of  
23 such examination to be placed in the office of the city clerk  
24 and the office of the city manager, to be open for inspection  
25 by all persons. Such examination shall not be made more than  
26 ~~two~~ four years in succession by the same accountant or firm.

1           "Section 4.03. The assistant city manager. Absence  
2 of city manager.~~-To~~ There shall be employed an assistant city  
3 manager. The assistant city manager shall perform his the  
4 duties of the city manager during his the temporary absence or  
5 temporary disability,~~the manager may designate by letter~~  
6 ~~filed with the city clerk a qualified administrative officer~~  
7 ~~of the city. In the event of failure of the manager to make~~  
8 ~~such designation, the~~ of the city manager. The council may by  
9 resolution appoint a qualified administrative officer of the  
10 City to perform the duties of the city manager until he shall  
11 ~~return or his disability shall cease~~ in the event of the  
12 temporary absence of the city manager and assistant city  
13 manager.

14           "Section 4.04. Administrative department  
15 departments.~~-(a)~~ There shall be a department of finance, and  
16 such other departments as may be established by ordinance upon  
17 the recommendation of the manager. In addition, the position  
18 of city planner shall be established.

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

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

25           "Section 6.13. Competitive bidding.~~-Before the city~~  
26 ~~makes any purchase of supplies, materials or equipment,~~  
27 ~~costing \$1,500 or more, ample opportunity shall be given for~~

1 ~~competitive bidding, under such rules and regulations, and with~~  
2 ~~such exceptions, as the council may prescribe by ordinance,~~  
3 ~~provided, however, that the council shall not except~~  
4 ~~individual purchases or sales from the requirement of~~  
5 ~~competitive bidding.~~All rules relating to a competitive  
6 bidding adopted by the council shall meet the minimum  
7 requirements of Title 41 of the Code of Alabama 1975.

8 "Section 6.14. ~~Contracts for city improvements.~~ ~~Any~~  
9 ~~city improvement costing more than \$1,500 shall be executed by~~  
10 ~~contract. All such contracts for more than \$1,500 shall be~~  
11 ~~awarded to the lowest responsible bidder after such public~~  
12 ~~notice and competition as may be prescribed by ordinance,~~  
13 ~~provided the city manager shall have the power to reject all~~  
14 ~~bids and advertise again. Alterations of any contract may be~~  
15 ~~made when authorized by the council upon the written~~  
16 ~~recommendation of the city manager.~~ The council shall adopt  
17 standards for competitive bids under this act. All standards  
18 shall meet the minimum requirements of Title 41 of the Code of  
19 Alabama 1975."

20 Section 3. Although this bill would have as its  
21 purpose or effect the requirement of a new or increased  
22 expenditure of local funds, the bill is excluded from further  
23 requirements and application under Amendment 621, now  
24 appearing as Section 111.05 of the Official Recompilation of  
25 the Constitution of Alabama of 1901, as amended, because the  
26 bill defines a new crime or amends the definition of an  
27 existing crime.

1                   Section 4. With the exception of Section 1 and the  
2                   amendment of Section 3.20. Examination of books and  
3                   publication of accounts, in Section 2 which shall be effective  
4                   immediately upon its approval by the Governor, or its  
5                   otherwise becoming law, the remainder of this act shall be  
6                   effective commencing on the next term of office of the city  
7                   council.