

# THE ALABAMA MUNICIPAL JOURNAL

September 2003

Volume 61, Number 3

## Smoking or Non?



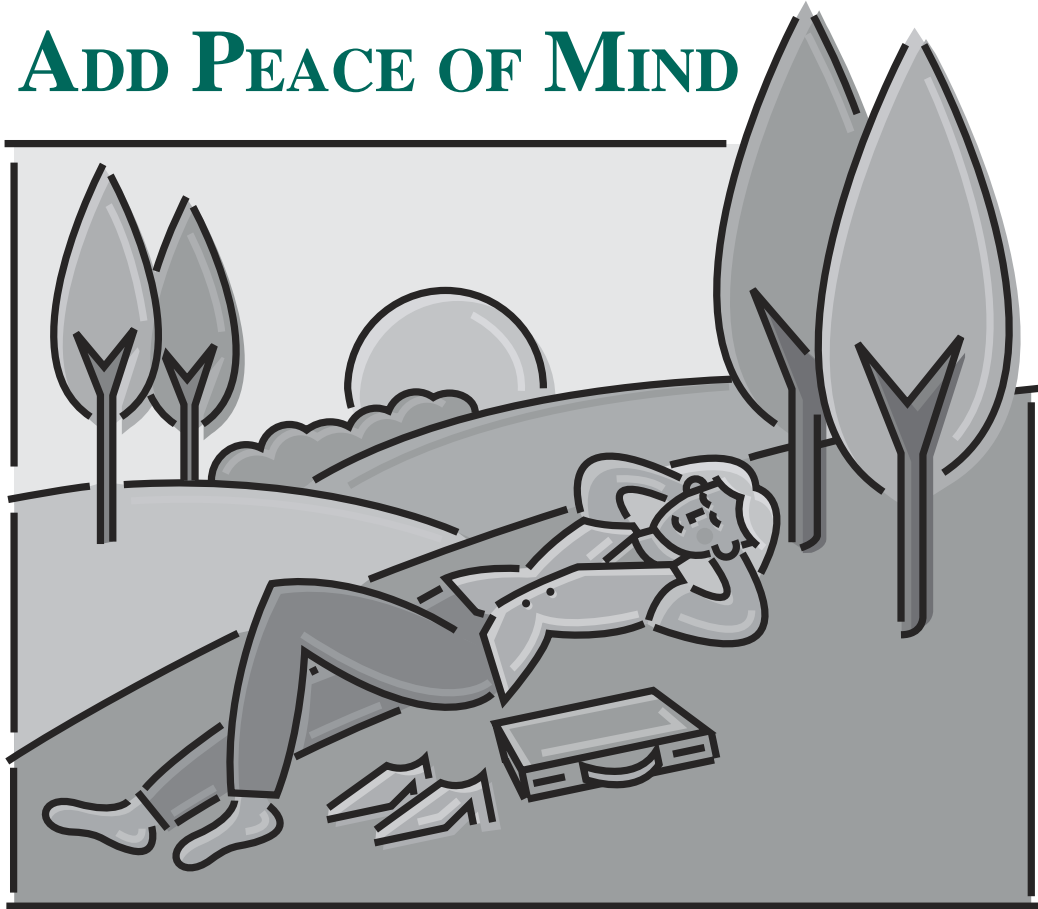
## Inside:

- Youth Organization Inspires Prattville's Innovative Smoking Ordinance
- Remembering John Watkins
- How Act 2003-400 Affects Municipal Elections

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# THE ALABAMA MUNICIPAL JOURNAL

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## Johnnie Wyers Selected “Clerk of the Year”

Johnnie Wyers, Town Clerk for the Town of Eldridge, was recently selected as “Clerk of the Year – 2003” by the Alabama Association of Municipal Clerks and Administrators. She was presented the award at the association’s recent summer conference in Guntersville.

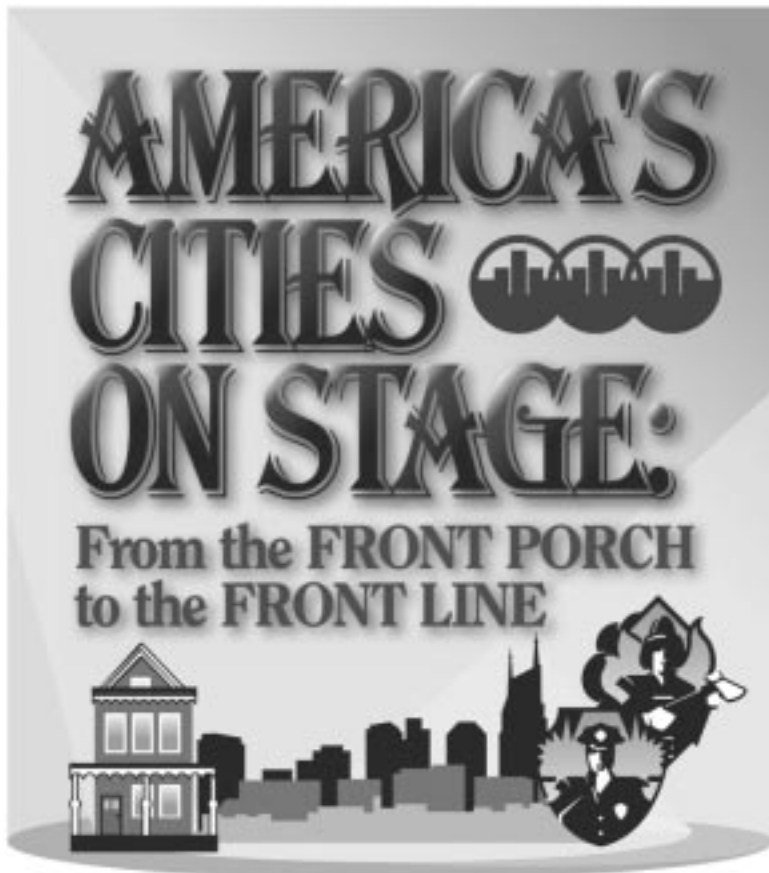
The award is based on experience and varied duties as municipal clerk, contributions made by the Clerk to their community as well as service to the Alabama Association of Municipal Clerks and Administrators and the International Institute of Municipal Clerks.

The Clerk of the Year is a very prestigious award. The Alabama Municipal Clerks Association has a total of Fourteen (14) districts that encompass the state.

Each district nominates a candidate to represent them for this award. Johnnie Wyers was honored by being selected as representative for District XI, as well as being selected as “Clerk of the Year – 2003”.

Johnnie has been a Municipal Clerk for 23 years. She has served five years as Scrapbook Chairman for AAMCA, two years as District XI Director and member of the Education Committee for the State Association.

On behalf of the Alabama Association of Municipal Clerks and Administrators, we want to congratulate Johnnie Wyers on being selected as our “Clerk of the Year – 2003”. She is a credit to our profession and to our State. ■



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# The President's Report

Dan Williams  
Mayor of Athens

## Why Do We Do This?

Why do we do this? I mean, why do we hold the public office of Mayor or Councilperson? I've had many people ask me these questions many times during my twenty years in public office, usually after I've taken a public shellacking for something over which I have absolutely no control. Those particular times have always been hard for me. It's hard to sit in a public meeting and hold your tongue, trying to be nice to a person who is irate and has all the facts wrong.

All of us are politicians, and to many people we are all alike. We are always arrogant, we always lie, we always straddle the fence, we always see which way the wind is blowing before we take a stand or vote on an issue. We always vote the way it will please the most voters. But we are not all alike. I know one Mayor who responds to the lying charge by saying that he promised his constituency, during his campaign, that he would never lie to them, unless it became absolutely necessary. Another well-known Mayor, responding to the charge of being arrogant, said: "I am a great Mayor; I am an upstanding Christian man; I am an intelligent man; I am a deeply educated man; I am a humble man." Another Mayor said this is the best job he has ever had because they give him a new car, free gas, and everywhere he goes, they give him a cup of coffee and a donut.

I do think all of us attempt to vote or make decisions that will please most voters. I think a politician who enters public office with the intention of seeing how many voters he/she can dissatisfy with his/her vote or decisions, will be ridden out of town faster than two hundred candidates can get on the California gubernatorial ballot.

Pleasing the voters and making progress is what it's all about. I think all successful politicians have found out how to please most of the voters, but I feel all of us have a point beyond which we will not travel. Money, resources and ideas are all subject to compromise. Everyone has their own idea of how to spend money; what programs we need in our cities; and how we allocate our resources in an efficient manner. However, truth, justice, honor and equality are aspects of our political profession that cannot be

compromised, and if they are, that politician's constituents will rise up against him, unless, of course, he is a member of the United States Congress.

We are all in the budget preparation process for the next fiscal year and are trying hard to do what needs to be done to make our city a better place for our families to live, work, play and have a great life. There's nothing wrong with working toward that goal, and in the process, pleasing enough voters to get us reelected next year. But we know we can't please everyone, so we generally sit quietly and listen to the criticism and anger directed toward us by those who are not pleased by what we have done, or are unhappy that we will not line up with the plan they want to impose upon their fellow citizens.

As I write this article, I am asked by citizens, how I will vote on Governor Riley's tax plan, and on our city's local referendum of the wet/dry issue. However I answer each of those divisive questions will please some and displease others. Remember, you can't please all of them, all the time. I usually tell them that I am going to vote and I will vote right.

So, why do we do this? Certainly not for the donuts and coffee. We do this because we think we are the best person in town for the job, and who can argue with this? We were elected by our friends and neighbors to do the job. I salute each of you for the great job you do as an elected official. I enjoy this more than anything I've ever done, and I have been blessed by being active with the Alabama League and associating with each of you and our great staff. Keep up the good work. ■

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# Smoking or Non?

## Youth Organization Inspires Prattville's Innovative Smoking Ordinance

By: Carrie Banks, Communications Director, ALM

Thanks to the diligence of an Autauga County youth organization, patrons dining in Prattville restaurants are no longer greeted with the customary "Smoking or non?" inquiry regarding their seating preference. On March 4, 2003, the Prattville City Council passed the "Prattville Environmental Tobacco Smoke Ordinance for Food and Beverage Establishments" which gave affected businesses until May 1, 2003, to make a critical determination about their environment: *totally* smoking or *totally* smoke-free. (See sidebar, page 10.)

### Peers Are Staying Straight (PASS)

Roughly two years ago, Council President Dean Argo began the discussion of a smoke-free ordinance that – at the time – would have required restaurants to construct a physical barrier and add appropriate ventilation in order to have a smoking section. "When I was elected for my second term, the dynamics of the Council changed," said Argo. "Tom (Miller) came on the Council, and since he was a medical doctor, I knew I had an ally on some health issues that I wanted to address. I introduced the ordinance primarily to begin a discussion. I knew that the resolution in that form was not going to pass, so I voluntarily withdrew it with the understanding that the Council would continue its discussions and that it would be an on-going issue. Then when Tom and I were approached by PASS, we felt that we had a constituency requesting us to look at health issues rather than *politicians* looking at an issue and then legislating it to the constituency."

PASS, or Peers Are Staying Straight The Noble Idea, Inc., is spearheaded by a community coalition composed of area citizens and utilizes Autauga County teenagers to serve as peer models for children and youth. PASS strives to reduce irresponsible behaviors and promotes environmental intolerance of drug use and violence in Autauga County youth. A primary component of the PASS project is to affect change in teen perceptions so that risky behaviors become deglamorized. According to Martha Ellis, Executive Director of PASS, the organization works under the umbrella of a community coalition of people from various agencies and organizations, individuals and parents to combat substance abuse and related issues in the community. "When you're looking at combating substance abuse, you're not just talking about drug awareness and prevention programs," she said, "you're talking about combating a lot of at-risk types of behaviors – from truancy to delinquency to run-aways – the whole nine yards."

PASS was founded in 1988 at Prattville High School following the death of a senior, Michael Nobles, who was killed by a drunk driver. It remained a chapter of the high school until 1996, at which time it became a community-wide organization funded by various grants and private donations. "We are a project of the Prattville Area Chamber of Commerce and have operated independently since 1996 as PASS The Noble Idea, Inc.," said Ellis.

### Approaching the City Council

"Tobacco is a drug, and so that fits under the umbrella of our prevention when we're looking at all at-risk behaviors," said Ellis. "After attending a youth empowerment training in Hoover, our youth coalition determined that they really wanted to work on trying to establish smoke-free restaurants or smoke-free public places. Tom Miller is on our coalition and is a member of the City Council, so we asked to meet with him and Dean Argo to see if they thought PASS could pursue this initiative."

According to Ellis, members of the youth coalition were the leading force in the effort. After meeting with Argo and Miller, they made a presentation to the entire Council regarding their interest in a smoking ordinance. In particular, they planned to conduct surveys in the community to gauge whether or not residents would support the initiative. They also requested permission to bring the survey results to the Council.

"We did three different surveys at three different times – one in front of a restaurant on a Friday night; one in front of Food World; and one in front of K-Mart," said Ellis. "The one question we asked was would you support or not support smoke-free restaurants. We also asked what city they were from and the name of their street so we'd know what district they were in – or even if they were from Autauga County." In addition, Ellis checked with a statistician from the Alabama Department of Public Health to determine the number of responses necessary for a representative sample. She was told that, based on county size, approximately 400 respondents would be appropriate. The teens surpassed that number and surveyed 612 individuals from Autauga County and 193 who were shopping and/or passing through from surrounding areas. In an effort not to skew their data, the teens approached people who were smoking as well as those who were not.

"Once the surveys were compiled (in February 2003), we went back to the Council and presented the data, showing them that, on average, the responses were about 75 percent

*continued page 9*



# Municipal Overview

By  
PERRY C. ROQUEMORE, JR.  
*Executive Director*

## Remembering John Watkins, the League's Second Executive Director

The Alabama League of Municipalities lost one of its greatest champions on July 28, 2003. Former League Director, John F. Watkins, passed away at the age of 84. John was born in Faunsdale, Alabama, a small town in Marengo County. Following graduation from high school at Sewanee Military Academy, Sewanee, Tennessee, he entered college at the University of the South in Sewanee. In his sophomore year, he transferred to the University of Alabama and received a BS degree in commerce and business administration in 1941.

John entered the Navy in September 1941, served during World War II in the Naval Air Force until November 1945, going on inactive duty as a lieutenant in the Naval Reserve. He returned to the University of Alabama and received his law degree in August 1947. He practiced law in Prattville, Alabama, until 1952, at which time he began working with the City of Prattville, first as City Recorder (Judge) and then as City Manager. He served in that capacity until October 1956, at which time he joined the staff of the Alabama League of Municipalities as full time staff attorney. John served as staff attorney from 1956 until July 1965, when he was appointed Acting Director of the League following the untimely death of the League's first Director, Ed Reid. One month later, at the 1965 Annual Convention of the League, he was appointed as the League's second Executive Director on August 24, 1965.

As Staff Attorney, John authored and obtained passage of the first uniform municipal election laws in 1961. Prior to this time, municipal elections were conducted pursuant to a limited number of statutes, court decisions and opinions of the Attorney General. These well-drafted laws have stood the test of time and, with few amendments, still govern the conduct of municipal elections today.

A long list of landmark pieces of legislation for the betterment of Alabama cities and towns were passed during his years as League Director. Among the more prominent pieces of legislation passed during his tenure:

**1967** – Constitutional Amendment to increase the debt limit of cities and towns to twenty percent (20%) of the assessed value of all property within the municipality.

**1969** – Authority for cities and towns to adopt a "true" sales tax; Authority for municipalities to adopt and enforce building codes.

**1971** – Authority for municipalities to annex property to the municipal limits by unanimous consent of the property owners; Abolishment of municipal election primary elections.

**1975** – Authority for municipalities to operate an ambulance service.

**1977** – Statutory limit on tort liability of municipalities of \$100,000 per person, \$300,000 per occurrence and \$100,000 for property damage.

**1978** – Legislation to allow municipalities to retain that portion of the State Fair Trial Tax collected necessary to pay for indigent defense; A Constitutional Amendment and statutory implementation act to create eight classes of municipalities to remedy the situation created by the *Peddycoart* court decision.

**1980** – Authority for municipal governing bodies to establish the salary of officials for the next administration

*continued next page*



**John Watkins, ALM's second Executive Director**

by ordinance. (Prior to this time, salaries were established by the legislature.)

**1986** – Law adopted to provide that municipalities would receive ten percent (10 %) of the interest earned by the state oil and gas trust fund in any year in which the total interest earned exceeded \$60 million.

During his service as League Director, he represented the League by serving two terms on the Board of Directors of the National League of Cities. He was responsible for the creation of many successful League member programs including the highly successful Municipal Workers Compensation Fund for whom he served as General Manager.

Under the leadership of John Watkins, the League acquired property on Adams Avenue in Montgomery, a block from the State Capitol building, and built a new headquarters building. The original building, which opened in 1970, was expanded in 1989-1990 and continues to serve League members today.

John Watkins wrote numerous publications for League members including the popular *Handbook for Mayors and Councilmembers* and the first edition of the *Selected Readings for the Municipal Official*.

Although John Watkins retired as the League's Executive Director in May of 1986, he never forgot the

League and its importance to municipal government. He kept up with the League and its activities until his death.

He was a member of the American Bar Association, the Alabama State Bar, the Governor's Community Development Block Grant Policy Committee and the Montgomery Kiwanis Club.

He is survived by his wife, Ruth, three sons: John III, Archer and George, six grandchildren and one great grandchild.

On a more personal note, in the fall of 1973, John Watkins decided to make a trek to the University of Alabama School of Law to interview senior law students interested in becoming the next League Staff Attorney. In November 1973, your current League Director was offered that job, and I became League Staff Attorney in January 1974. I was truly blessed with having the privilege of working for John from 1974-1986. No one could have asked for a better teacher on the subjects of municipal and legislative law as well as life itself. He was a people-person who was respected by leaders throughout the state and across the nation. He truly loved our League.

Above all, John Watkins was the definition of a "True Southern Gentleman" and will be sorely missed by me and by all who knew him. ■



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in favor of smoke-free restaurants and 25 percent opposed,” said Ellis. “We then requested that the Council begin consideration of an ordinance that prohibited smoking in public places. In addition, we asked for consideration of an open forum because we didn’t want people to feel as if they didn’t have a voice.”

According to Council President Argo, the Council held a “well attended” public hearing in March with about 65 people signed up to speak. “There were two lists set up – one in favor of the ordinance and one against,” said Argo. “People who wanted to speak signed up as they entered the room. I alternated from one list to the other as I called people to speak. Some people ended up passing because someone speaking before them had already addressed their concerns.” What the Council found was that the majority of those attending the hearing were in favor of a smoking ordinance.

## Art of Compromise

Dr. Tom Miller, Prattville Councilmember and Director of the Bureau of Family Health Services for the Alabama Department of Public Health, said the smoking ordinance was originally targeted as a total workplace ban because the entire effort was approached as a health issue. “Basically, we were looking at secondhand smoke as a carcinogen,” he said. “However, as it unfolded with the public hearing and feedback from community business leaders – through the art of compromise – we shaped an ordinance everyone could live with. Instead of a total workplace ban, the ordinance was directed at businesses that had a city business license and either a food handling permit from the county health department or a liquor license from the ABC Board. Businesses that met the criteria had to choose to be either totally smoke-free or totally smoking. If the business chose to be smoking, it could not offer a non-smoking section. It had to be all or none.”

In making the decision on how the ordinance should be written, Dr. Donald Williamson, the State Health Officer with the Alabama Department of Public Health, was invited to address the Council. “I was totally ready for Dr. Williamson to say that we were going about this ordinance the wrong way because we were still allowing smoking in some restaurants,” said Council President Argo. “But he stood before the Council and said that by shaping (the ordinance) in the way we were going, that we were debunking the myth that smokers and nonsmokers can coexist in the same building – that when you’re in a restaurant with a smoking section, you’re in a smoking environment, even if you’re sitting in a nonsmoking area. You’re still breathing that air because air circulates. I think (his remarks) totally turned the Council around. I know it turned me around,” said Argo.

According to Miller, the ordinance does allow for separate, enclosed smoking areas for employees. “For example,” he said, “the Prattville Wal-Mart has an employee smoking lounge

that rivals the Atlanta airport. Such settings – where there’s an employee smoking lounge that’s open only to the employee that smokes – are different from allowing a smoking section in a restaurant with a wall and ventilation for customers because the restaurant can’t guarantee that they’re not going to assign non-smoking employees to work in the smoking section. Smoking employees have a higher rate of calling in sick, and the restaurant manager – as you would imagine – assigns the staff where they’re needed. So there’s no way to guarantee that the non-smoking employee would not be exposed to the smoking section.”

Miller emphasized that the “Prattville Environmental Tobacco Smoke Ordinance for Food and Beverage Establishments” was the final product of a lot of compromise. Argo agrees. “I think one of the most important things about the art of compromise is that – while both Tom and myself feel strongly that the workplace should be smoke-free because it’s a real danger in America, in Alabama and in Prattville – we also knew that, rather than to drag people kicking and screaming to which you automatically build a base who will fight you at every turn, we should approach the issue in such a way that everyone is at least a little bit happy or a little bit upset. My personal philosophy was to fight to the very end to be totally smoke-free, but had I done that, I would have not only alienated people who supported me and business people who I try to help, I would have also alienated people on the Council who felt like I did but didn’t want to force something down the throats of the business owners.

“I’ve not had anybody come to me within my district and tell me it was not a good idea,” said Argo. “In fact, I’ve heard nothing but positive comments. The business owners who originally had some concerns about a totally non-smoking workplace liked the idea because they are now free to choose and it’s not government legislating to them.”

Mayor Jim Byard is also pleased with the outcome. “I think the ordinance was a very good compromise,” he said. “It was handled very well by the Council – and the City as a whole – because it really could have been a divisive issue. It may not give everybody exactly what they want, but people do still have a choice.” (See sidebar, page 10.)

## Voices of the Future

Tonda Smith, a junior at Prattville High School, served as the secretary for the youth coalition during their work with the Council to pass the smoking ordinance. She became involved with PASS during the last few months of her ninth grade year. “I was at every meeting about the smoking ordinance,” she said. “I was taking minutes, writing down what was said and creating highlights. I didn’t always get to talk, but when I did say something, it wasn’t scripted – it was what I had on my mind.”

*continued next page*

She was surprised at how quickly the ordinance came about. "We were prepared to work on this issue for two or three years, but it took less than a year, so we were very impressed." As for her experience working with the City Council, she said: "I'm not of voting age yet, but most of the people on the coalition were 17 or 18 years old and were getting ready to graduate and start voting. I think the Council realized that if they didn't listen to us, they wouldn't have our respect in the future. I found the council members to be very receptive to us."

Tonda, who has aspirations of becoming an attorney, said her membership in PASS has been very rewarding: "We have a lot of grown-ups involved in PASS who are leading us and giving us experience in everyday life. It's not only about staying off drugs, it's about everyday life. If we have a problem with anything, we can talk to them about it." She went on to say that not only are her parents proud of her achievements through PASS, but she's proud of herself. "Before I became a PASS member, I was a homebody – and you don't get recognized by staying at home," she said. "Since I've become a PASS volunteer, I've been in the news more times than I can count and people have called me to tell me they've seen me on TV." She was also quick to point out that, through her encouragement, two of her younger cousins have joined PASS and that the children at her church have asked her questions about becoming PASS volunteers and that they look up to her as a big sister of sorts.

"I'm passionate about everybody in the program," said Tonda. "It's great – like a home away from home. I would recommend this program for anyone and I'd ask that, in addition to sending money (to support the program), that adults send their children to PASS because it's a well-rounded experience."

For additional information about PASS, The Noble Idea, Inc., visit their website at [www.pass-inc.net](http://www.pass-inc.net). For a complete version of Prattville's smoking ordinance, visit their website at [www.prattville.com](http://www.prattville.com). ■



Martha Ellis, Executive Director of PASS, and Tonda Smith, PASS member, were pleased with the outcome of PASS' efforts to create a smoking ordinance in Prattville.

## Questions and Answers About Prattville's Smoking Ordinance

**Q: What businesses are affected by the ordinance?** Any business which has a City of Prattville business license and one or both of the following: (1) food handling permit from the county health department; (2) "on premise" liquor license from the Alcohol and Beverage Control Board. This includes restaurants and bars; grocery stores which have delicatessens, fish markets and/or meat markets; and businesses such as the following if they are required to have a food handling permit: childcare centers, gas stations and convenience stores, hotels, motels, inns and bed and breakfasts.

**Q: What is required of the business?** The establishment must be designated as SMOKE-FREE or SMOKING.

**Q: What happens in an establishment which chooses "smoke-free"?** No one, employees or patrons, may smoke inside the establishment at any time.

**Q: Are there any exceptions in the smoke-free establishments that would allow smoking by employees?** A separate smoking lounge may be offered to employees who smoke if it is physically separated with a dedicated ventilation system and patrons are not allowed to enter it. This does not mean that the entire employee-only area can be considered or converted into an employee smoking lounge.

**Q: What happens in an establishment which chooses "smoking"?** Smoking by patrons is allowed throughout all enclosed areas generally occupied by patrons. Patrons cannot be offered the choice of a nonsmoking section; if ashtrays are available, they must be made available throughout the establishment.

**Q: Are signs required?** There are very specific requirements regarding signs for both smoke-free and smoking establishments. These requirements specify the minimum and maximum size for the sign and for the lettering, the colors for the lettering and for the background, the statements to be included and the placement of the signs. Signs may be obtained by a variety of ways such as desktop publishing, local print shops, etc.

**Q: What about two or more establishments which are in the same building – can one be smoking and the other smoke-free?** Generally, this is permitted if they are not directly connected and the SMOKING establishment has an HVAC system which serves only that area; is physically separated in its entirety by walls; and any doors to that area are self closing.

**Q: Can hotels and motels which are affected by this ordinance still offer lodging rooms for smokers?** Yes, designated "smoking rooms" for rent to patrons who smoke are allowed.

As of July 15, 2003, sixty-one entities affected by the smoking ordinance had declared their establishment to be smoke-free. Fifteen had declared themselves to be smoking establishments. For more information about Prattville's innovative smoking ordinance, visit [www.prattville.com](http://www.prattville.com).

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# ENVIRONMENTAL OUTLOOK



By Gregory D. Cochran  
Director, State and Federal Relations

## Urban Sprawl Targeted by Auburn Research Center

Is the Southeast fated to become the next New Jersey? How can rustic rural areas across the region survive the onslaught of the most rapid population growth in the United States?

Questions about the future of rural areas are at the heart of a major initiative of Auburn University's Center for Forest Sustainability. In the search for better ways to manage urbanization, the research center has drawn together up to 16 researchers and an equal number of graduate students from five diverse colleges and schools at Auburn.

"We are dealing with quality of life and economic issues on a scale that would overwhelm any single discipline," says the center's director and a professor in the AU College of Forestry and Wildlife Sciences. The goals will be studying factors in combination with one another to produce a more comprehensive picture of the urban-rural interface.

With that knowledge, cities and states will be better able to manage the growth for maximum economic impact and the best quality of life. It is not a question of whether urbanization occurs but how it occurs. Land-use issues in the urban-rural interface can get very complicated. Most of these issues are not matters of right and wrong but of well-meaning people trying to protect their investment, either in the land or business or in their quality of life.

Started two years ago as one of seven Peaks of Excellence research initiatives at AU, the Center for Forest Sustainability is examining urban expansion issues between two of Georgia's largest cities – Atlanta and Columbus – and in Alabama's high-growth area between Birmingham and Huntsville, as well as other areas near those cities. These initial results of the Atlanta-Columbus corridor study are encouraging and hold promise for the North Alabama studies. Growth in those areas is outpacing the ability of urban and county governments to maintain services. Rapid, uncontrolled growth is also creating unwanted risks as well as opportunities for developers, taking crop and timberland out of production and diminishing the

quality of life and the environment for rural dwellers and landowners.

The AU center brought together on-campus experts in agricultural economics, agronomy, anthropology, architecture, biosciences, geography, forestry and wildlife sciences. These scientists are developing a computer model to help guide urban expansion into rural areas.

The comprehensive model can be used to predict land use patterns, water quality, distribution of forests and bird populations and other results of future development scenarios. While many land-use studies focus on one or two aspects of growth in a single city or county, the comprehensive model and its subsets will eventually enable planners to examine these questions at regional scales.

The model will assess the relationships among variables such as development alternatives, economic impacts, water quality, loss of forest land and wildlife habitat and changes to the area's culture and historical features.

Timber companies and owners of forest land are especially threatened by urbanization, which drives up the cost of forest land and pushes out forest-related industries along with farmers and rural dwellers. The model and its subsets will help those industries and landowners maintain forest land in an economically viable manner as urban expansion continues.

There has been a lot of support from citizens' groups and local planning agencies, and we have had widespread acceptance by landowners. This has enabled the group to gather data that otherwise would be very difficult to obtain. For more information, you may visit the AU website: [http://www.auburn.edu/academic/forestry\\_wildlife/ctr\\_forest\\_sustainability/](http://www.auburn.edu/academic/forestry_wildlife/ctr_forest_sustainability/)

**Trashing Alabama's Coast: 2002 Coastal Cleanup Statistics**

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One of Alabama's most successful cleanup programs is the Annual Alabama Coastal Cleanup. Held every September for the last 15 years, the program is supported by thousands of volunteers.

The 16th Annual Alabama Coastal Cleanup will be held on September 20th. If you are interested in supporting this very successful program, contact Amy King, Public Education and Outreach Coordinator, state Lands Division office at 251-929-0900. In a recent article published in "Alabama Current Connection," Phillip Hinesley wrote a wonderful article about the program and provided some incredible statistics.

**2002 15th Annual Alabama Coastal Cleanup Figures:**

- 3,336 Volunteers
- 290 miles of shoreline and waterways cleaned
- 114,872 pieces of debris picked
- 83,999 pounds of debris
- Examples of Dangerous Debris (for marine wildlife) Items Picked Up Throughout 2002: 4,512 bags, 5,149 balloons, 191 crab/fish traps, 950 fishing line, 1,557 plastic sheets/tarps, 1,620 rope, 755 six-pack holders

**Walking Statistics**

Here are some interesting statistics about "walking" in Alabama from the Surface Transportation Policy Project (STPP) out of Washington D.C.

- 57,812 Alabamians walk to work
- Alabama spends less than 1% of its federal transportation money on pedestrian and bicycle facilities
- 7% of all trips under a half mile are made in a vehicle
- The average amount of time an Alabamian spends in a car is 71 minutes a day

For more information about "Walking in Alabama" visit the STPP website at: [www.transact.org/report.asp?id=205](http://www.transact.org/report.asp?id=205)

**Auburn Solar Car Finishes 12th in 2400 Mile Race**

Last month, Auburn University's solar car entry into the American Solar Challenge Race finished 12th place overall. The project, which drew 51 teams with cars from universities across the country, was a 2400 mile, 11 day journey, starting in Chicago, traveling along Route 66 and ending up in Claremont, California. The Auburn car was one of only 20 cars that met the safety requirements and completed the race on time.

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By Ken Smith  
Deputy Director/Chief Counsel

# THE LEGAL

## VIEWPOINT

### How Act 2003-400 Affects Municipal Elections

The 2004 municipal elections will be held on Tuesday, August 24, 2004. Officials who will be responsible for conducting these elections, as well as potential candidates, must be aware of the laws affecting the election process. The League will soon publish a special report that details all of the rules and regulations applicable to the municipal election. However, during the 2003 regular session, the legislature made a number of changes to the election process that impact municipalities. One of the laws enacted was proposed by the League and was designed in part to address some of the problems and issues that arose during the municipal elections that were held in 2000.

Although this Act has yet to be precleared by the Justice Department, this article lists and explains these changes.

#### Notice of Elections

The mayor is required to give notice of the municipal election on the first Tuesday in July preceding the election. In 2004, notice of the election must be provided on July 1, 2004. Candidates may begin qualifying when notice is given.

Act 2003-400 amends Section 11-46-22(b), Code of Alabama, 1975, and provides that notice must be given in substantially the following form:

“Notice is hereby given on (day of week), (date – month, day, and year) an election for the purpose of electing a mayor (or other chief executive) and the board of aldermen (town, city council, or other municipal governing body, or, if the positions on the governing board have been designated by number, the position numbers to be filled at the election) and the other officers as pursuant to duly enacted law or ordinance, or any or all of the officers, are to be elected at the election for the city (or town) of ....., Alabama, will be held, and that all registered and qualified electors of the state, who reside within the corporate limits of ....., Alabama, and have resided therein for 30 days or more immediately preceding

the date of the election, and who are qualified to vote in the county precinct which embraces and covers that part of the corporate limits of the city (or town) in which the elector resides, will be authorized to participate in the election.

“The polls will be opened at (here list the places of voting which have been designated pursuant to Section 11-46-24).”

“If necessary, a run-off election will be held on (day of the week), (date - month, day, year).”

“Any qualified elector who will have resided within the municipality, or if the municipality is districted, within the district from which he or she seeks election, for a period of at least 90 days on election day may qualify to run for office by filing the appropriate forms and paying any appropriate fees, as otherwise provided by law.”

Note that nothing in Act 2003-400 adds any additional requirements to qualify as a candidate. All criteria listed in the notice have always been required to run for municipal office. This change merely gives notice to all potential municipal candidates as to what criteria they must meet to run.

#### Electronic Voting Devices

Like most elections in Alabama, many municipalities no longer use paper ballots or true voting machines. Instead, municipal elections are generally conducted using what are considered hybrid devices that change as technology develops. Rather than attempt to create rigid laws governing the use of these devices, the legislature chose to establish a committee to certify which equipment can be used to conduct elections in Alabama and to develop rules governing their use.

There was, though, some ambiguity concerning the number of these devices required in municipal elections.

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Act 2003-400 resolves this confusion by amending Section 11-46-24 of the Code to provide that where a municipality chooses to use a device that is governed by the regulations of the committee, the required number of devices necessary to run the election shall be determined by regulations applicable to that type device.

Another change Act 2003-400 makes regarding the use of electronic voting devices is to amend Section 11-46-31 to require municipalities using electronic devices to post, at least 30 days prior to election, a sample of the ballot or vote card that will be used in the election. The council is to determine the times and locations for posting the sample that are most suitable for the information and instruction of the voters.

Further, Section 11-46-31 was amended to provide that these municipalities are no longer required to put a voting device on public display, since voters will not actually be voting on the machine. The machine merely tabulates their votes. This change was intended to give voters instructions in how the cards that will be fed into the tabulators should be filled out, since this is where the problems generally arise.

### **Run-Off Machine Numbers**

Under election law prior to the passage of Act 2003-400, municipalities were required to provide at least one ballot box for every 300 voters, one voting machine for every 600 voters and one electronic voting machine for every 1,200 voters. Act 2003-400 amends this requirement in two instances involving municipal run-off elections.

First, the Act amends Sections 11-46-24 and 17-9-4 to provide that in a run-off municipal election involving 50 percent or fewer races than were on the general election ballot, the number of voters allowed per machine is doubled – that is, there must be at least one ballot box for every 600 voters or fraction, one voting machine for every 1,200 voters or fraction and one electronic voting machine for every 2,400 voters or fraction. Further, Act 2003-400 amends Section 11-46-24 to provide that if all the ballots in a municipal run-off election are the same – for instance, where the only race remaining in the run-off is for the mayor’s position – then, again, there must be at least one ballot box for every 600 voters or fraction, one voting machine for every 1,200 voters or fraction and one electronic voting machine for every 2,400 voters or fraction.

Neither of these changes affects in any way the duties of municipalities to either provide polling places in each district or establish voting centers. Instead, the reason for these two changes is simple – to reduce the costs of the run-off election without affecting the ability of the voters’ to cast their votes or delay their time spent in the polling place. When there are fewer races to be voted on – which should proportionally reduce the amount of time voters spend

voting – Act 2003-400 makes a similar reduction in the number of required voting devices, resulting in a cost savings to municipalities by requiring the lease of fewer machines or ballot boxes.

### **Election Officials**

Many municipalities have faced difficulties in finding sufficient numbers of election officials to properly conduct elections. As would be expected, this problem is more common in smaller municipalities that have reduced populations to draw from. To help alleviate this concern, Act 2003-400 amends Section 11-46-27 to allow election officials in Class 6, 7 and 8 municipal elections to come from anywhere in the municipality rather than from districts where they live. Pursuant to Section 11-40-12, Class 6, 7 and 8 municipalities include all municipalities with populations of 24,999 and under, based on the 1970 decennial census. This will allow these municipalities to appoint officials who reside anywhere in the municipality, regardless of whether they live in the district where they will serve.

Having election officials serve outside their districts, though, raises the issue of how these officials can vote. To solve this problem, Act 2003-400 amends Section 11-46-27 to provide that any official who is serving in a polling place outside the district in which they live may vote by absentee ballot.

Another change involving election officials is to amend Sections 11-46-27, 17-10-10 and 17-10-11 to allow municipalities with populations under 10,000 according to the most recent decennial census to appoint separate election officials to deal with absentee ballots. Both before and after the adoption of Act 2003-400, municipalities with populations of 10,000 and above are required to appoint officials for this purpose. Act 2003-400 merely makes this authority permissive in municipalities under 10,000. If one of these municipalities chooses to appoint extra officials for this purpose, it must adopt an ordinance at least six months prior to the election stating that at the time other election officials are appointed, additional officials will be appointed who shall meet on the day of the election at the place and hour designated by the municipal governing body for the purpose of receiving, counting, and returning the absentee ballots cast at the election. There must be at least three election officials appointed for this purpose. When other officials are appointed, one shall be designated as the inspector.

### **Polling Hours**

Prior law allowed municipalities to set polling hours from an opening time no earlier than 7:00 a.m. and no later than 8:00 a.m. to a closing time of no earlier than 6:00 p.m. and no later than 8:00 p.m. Act 2003-400 amends Section 11-46-28 and makes municipal polling hours consistent with



those used in state and county elections. Polls in municipal elections must open at 7:00 a.m. and close at 7:00 p.m. and remain open for twelve consecutive hours.

Another issue that has arisen concerning polling hours involves municipalities located in the Eastern Time Zone. Although most municipalities in Alabama are located in the Central Time Zone, a handful of municipalities are located in the Eastern Time Zone. Act 2003-400 further amends Section 11-46-28 and allows these municipalities to elect to conduct their elections on Eastern Time, rather than Central. This authority is permissive, so the council must pass an ordinance to implement this change. The League recommends passing this ordinance prior to the date the mayor gives the notice of election, since the notice must contain the time and places where residents can vote. Once adopted, this ordinance must be submitted for preclearance.

### **Absentee Ballots**

Prior law contained an inconsistency between absentee voting in municipal elections and absentee voting in all other elections in Alabama. This inconsistency concerned the time when an absentee voter's name was to be stricken from the official voter's list that would be used on election day. In municipal elections, the voter's name was removed when he or she "voted." See, Section 11-46-28(e). In other elections, the names of absentee voters are removed when they "apply" for an absentee ballot. See, Section 17-10-5. Because absentee ballots can be returned the day of the election, election officials could not know who "voted" absentee at the time the polls opened, meaning that a voter in a municipal election could potentially vote in person even if he or she had applied for and returned an absentee ballot that was not received until election day. Act 2003-400 eliminates this problem by amending Section 11-46-28(e) to provide that a person's name is stricken from the voter's list when they apply for the absentee ballot.

Another amendment to the absentee ballot laws involves the voter's list. In state elections, the voter's list must be given to the absentee election manager at least 45 days before the election. Act 2003-400 amends Section 17-10-5 to require the mayor (or other person preparing the list) to give the list to the absentee election manager in municipal elections at least 35 days before the election. The reason for this is that ballots are supposed to be mailed to the absentee voter "no later than the next business day after an application is received" according to Section 17-10-5(a). In municipal elections, the qualification date has not passed at this time and the ballots are not available until 35 days before the election. This change merely conforms to the different dates candidates must qualify to run for office in municipal elections.

Act 2003-400 also changes the place for posting the list

of applicants for absentee ballots. This list is posted to provide notice to the public of those persons who have applied to vote absentee. In the past, this list was required to be posted at the county courthouse, making the list difficult to access for voters in cities where the courthouse was not located. Section 17-10-5(b). Act 2003-400 amends Section 17-10-5(b) to require the list of applicants for absentee ballots in municipal elections to be posted at city or town hall, rather than at the courthouse.

Act 2003-400 also changed the process for voters who have to vote by a medical emergency absentee ballot. Section 17-10-12 allows any registered elector who requires emergency treatment of a licensed physician within five days of an election to apply for an emergency absentee ballot. These voters are permitted to have a designee deliver the ballot for them. Prior law required the delivery of these ballots by 5:00 p.m. the day before the election. Act 2003-400 amends Section 17-10-12(b) to permit a designee to deliver a medical emergency absentee ballot up to noon on election day. This will allow the designee to deliver the ballot when he or she comes to vote.

### **Poll Watchers**

Section 11-46-35 allows candidates in municipal elections to appoint poll watchers. The appointment of poll watchers in other elections is governed by Section 17-6-8. Act 2003-400 amended both of these Sections to make it clear that the function of a poll watcher "is to observe activities at the polling place. The watcher may not disturb voters, attempt to influence voters, campaign, or display or wear any campaign material or buttons while inside any polling place." This codifies prior practice and understanding regarding the poll watcher's role.

### **Recounts**

Before Act 2003-400, the electronic voting commission established a procedure that allowed any person with standing to contest an election to request a recount of the electronic ballots. There was no procedure to request a recount in elections that did not use electronic voting devices. Act 2003-400 adopts the electronic voting recount procedure in municipal elections using other devices such as voting machines and paper ballots. Section 2, Act 2003-400, adding Section 11-46-55.1 to the Code of Alabama, 1975.

This procedure requires the person requesting the recount to file a petition with the canvassing body (which in most cases will be the municipal council) within 48 after the votes in the election are canvassed. The petitioner must give security to cover the costs of the recount in an amount determined by the municipal governing body based upon an estimate of actual costs. The recount must be conducted

*continued next page*

under the supervision of a trained and certified poll official. Representatives of opposing interests shall be given at least 24 hours notice and shall be invited to participate in the recount.

The recount shall be conducted as simply as the type of equipment and local conditions permit provided that the following minimum safeguards shall be observed:

- (1) The box or envelope holding the ballots shall be delivered unopened to the inspector in charge of the recount.
- (2) A representative of the municipality shall be present during the recount.
- (3) Where ballots are counted by hand, representatives of opposing interests have the right to participate in the hand count, and any unresolved disputes over the interpretation of the voter's intent may be appealed to the municipal governing body.

When the recount is completed, the ballots shall be returned to their container along with a copy of the recount results. The ballot container shall be sealed and signed by the inspector conducting the recount and by the representative of the authority having custody of the ballots.

If the recount produces a change in precinct totals of sufficient magnitude to alter the result of the election, the outcome shall constitute grounds for an election contest.

If the recount of the resulting contest alters the result of the election, the cost of the recount shall be borne by the municipality.

This process does not apply to any recount in an election where any device regulated by the Alabama Electronic Voting Committee was used.

### Conclusion

Although this article exclusively addresses Act 2003-400, the legislature has passed other bills that will have an impact on municipal elections. One of the most significant changes that has taken place from the municipal election four years ago is the elimination of on-site absentee voting. Other changes include a voter identification bill that will require voters to identify themselves in one of the listed ways prior to voting and the new Help America Vote Act (HAVA). The League is presently examining these and other bills to determine how they affect voting in municipal elections. Additionally, the League may propose additional legislation between now and the election next year to further clarify the municipal election process. We will further address these issues in the next edition of our special report on the procedures for conducting municipal elections. ■

**NOTE: The 2004 Municipal Elections Calendar is posted on the League's website at [www.alalm.org](http://www.alalm.org). A copy will also be published in the October issue of the *Journal*.**

## 2003 Annual Directory & Vendor Yellow Pages

**The *Annual Directory & Vendor Yellow Pages* is a 132 page, 8" x 11 publication with a coil binding that also offers information about the League and our staff and provides contact information for the Alabama House of Representatives, the Alabama Senate, Constitutional officers and important state agencies. Municipal listings for Alabama's more than 400 incorporated cities and towns are included in the publication.**

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# Legal Notes

Lorelei A. Lein  
League Counsel

## DECISIONS FROM OTHER JURISDICTIONS

**Tort Liability:** A municipality can be held vicariously liable for violations of the Driver's Privacy Protection Act (DPPA) for the improper release of driver's license information by municipal law enforcement personnel. Unlike state agencies, the DPPA does not exempt municipalities from liability. *Margan v. Niles*, 250 F.Supp.2d 63 (N.D.N.Y. 2003).

## ATTORNEY GENERAL'S OPINIONS

**Appropriations:** Generally speaking, a city council may not disregard its duty to determine whether certain events serve a public purpose when evaluating the appropriateness of a particular appropriation of public funds. Such a determination should be made on a case-by-case basis. However, the city council may narrowly tailor a resolution that determines that certain events, factually similar, serve a public purpose. 2003-187.

**Offices of Profit:** A police chief is a public officer and holds an office of profit. A retired police chief may not be selected to serve on the personnel board for the City of Alabaster because he held a public office within the prior three years which disqualifies him under the City of Alabaster Civil Service Act. 2003-188. NOTE: This opinion only applies to the City of Alabaster as it relates specifically to the Alabaster Civil Service Act.

**Appropriations:** A city may donate city-owned property to a veteran's association foundation for the purpose of building a veteran museum and art center, if the city determines there is a public purpose and ensures that a public purpose is served. 2003-189.

**Appropriations:** Funds received pursuant to a federal grant program must be administered in accordance with the

provisions and purposes of the grant. 2003-190. NOTE: The League advises that a municipality check with their grant administrator when questions arise regarding the expenditure of grant funds.

**Elections:** The general manager of a water authority organized pursuant to Section 11-88-1, et seq., of the Code of Alabama 1975, is not prohibited by state law from running for the office of county commissioner. 2003-193.

**Property:** A municipality is not authorized to purchase property for future residential development with the municipality providing infrastructure and selling all parcels to a developer for resale to the public. A municipality is authorized to undertake redevelopment and urban renewal projects to clean up and prevent blighted areas or slums. Further, a municipality may donate property to an airport authority which has the authority to acquire property for residential development purposes if this activity furthers the purposes of the airport authority. 2003-192.

**Competitive Bid Law:** When an awarding authority requires that a bidder submit a bid bond or a certified check with their bid, the failure by a bidder to have either at the time of the bid opening renders the bidder unresponsive. 2003-196.

**Competitive Bid Law:** A county cannot renew solid waste contracts with collectors without competitively bidding those contracts when the original contracts are deemed void for failing to comply with the competitive bid law. 2003-197.

**Franchise Fees:** Franchise fees can be collected only within the corporate limits of a city or town and not within the police jurisdiction. 2003-203.

*continued page 23*

**Public Records:** Whether an individual water meter belongs to a customer depends upon the policies of the water authority providing service. Names of customers, dates of service, and amounts of charges are generally public records. However, more personal information concerning a particular customer such as home address, phone number, and social security numbers may be withheld from public inspection. 2003-204.

**Elections:** The challenged balloting procedures found in Section 11-46-39 of the Code of Alabama 1975 continue to apply to municipal elections, including absentee ballots, despite the provisional balloting proceedings contained in the Help America Vote Act, Act 2003-313, 2003 Regular Session. 2003-207.

**Boards:** Although a particular legislative delegation is the original appointing authority for two elected positions to a municipal water board pursuant to local act, the delegation has no authority to fill a vacancy in those positions after the first election. The municipal governing body has the authority to fill the vacancy and may appoint a member of the Legislature to fill the vacancy. 2003-208. NOTE: This opinion relates specifically to the Electric Utilities Board for the City of Tuskegee.



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# Federal Legislative and Regulatory Issues

Mary Ellen Wyatt Harrison  
Staff Attorney

## Senate Commerce Committee approves measure to make the Internet Tax Moratorium Permanent

The week of July 28, 2003, the United States Senate Commerce Committee approved the Internet Tax Non-Discrimination Act, (S. 151) that would make the Internet Tax Moratorium on remote sales tax permanent. The National League of Cities has reported that if this measure is passed by Congress it could threaten state and local governmental efforts to seek Congressional endorsement of the Streamlined Sales Tax Project. The current moratorium is scheduled to expire November 1, 2003. The Act, if passed by Congress, would also bar local governments from taxing Internet access in all forms.

Commerce Committee Chairman John McCain (R-Ariz.) said that he would hold hearings to address the internet sales tax issue after the Senate returns from its August break.

Under current federal law, internet merchants are only required to charge the applicable sales tax if the buyer is located in the same state where the seller has a store or distribution center. The Streamlined Sales Tax Project has been working to get congressional approval to collect sales taxes on purchases made online.

## Senate Passes Homeland Security Appropriations

On July 24, 2003, the Senate passed its version of the Homeland Security Appropriations Act, 2004. The budget for the Homeland Security deposit totals \$29.3 billion.

The measure will provide a total of \$3.6 billion in funding for first responders on the state and local levels. Of this amount, \$1.3 billion would be allocated for basic formula grants to states, and local governments will receive at least 80 percent of the funding for first responder training, exercises and equipment. The House version of this bill allocated \$1.9 billion for basic formula grants.

There are several differences in the House and Senate versions of the bill, and those differences will be resolved in a conference committee in early September. Senator Richard Shelby is on the Senate conference committee, and the house members have not been appointed.

Please contact your senators to urge them to support full funding for first responders.

## House Chooses Not to Block Grant Section 8

The week of July 28, 2003, the House of Representatives accepted a \$13.41 billion appropriation for the Section 8 Housing Voucher Program. It did not take action on an Administration proposal to dismantle the program and replace it with a block grant program that the states would administer.

The final appropriation was lower than last year, however, the House's decision to maintain Section 8 as a locally administered tenant-based voucher program was a victory because the program will not be turned over to the states.

At the same time, the House approved a \$54 million appropriation for HOPE VI, which had been funded at \$574 million in FY 2003.

The Senate VA HUD Appropriations Subcommittee will consider the Appropriations Bill after the August recess.

## Bullet Proof Vest Program up for Reauthorization

When the Senate reconvenes after the August recess, it will take up the Bulletproof Vest Partnership Grant Act of 2003 (S. 764). The Act will authorize the \$50 million dollar matching grant program for an additional three years.

The funds help state and local law enforcement agencies purchase protective vests for their police officers.

Under the program, jurisdictions with less than 100,000 citizens were made a priority, and those selected

*continued next page*

were guaranteed to receive federal assistance with 50 percent of the vest. Larger local governments were not guaranteed 50 percent assistance with each vest.

At this time, S.764 has cleared the Senate Committee on the Judiciary and is pending a vote by the full Senate.

### The FCC has Reorganized the Local, State Advisory Committee

The FCC has issued a proposal to reorganize the Local, State Advisory Committee and rename it the Intergovernmental Advisory Council.

In the past, the Local, State Advisory Council has advised the FCC on issues of concern to state and local governments. In addition, the members of the committee have always been available to answer questions surrounding FCC rulings.

Under the proposal for reorganization, local government will lose its majority on the committee; however, it will retain a plurality. Additionally, the new council will seek to have more rural representation on the committee.

To be a local representative on the committee, an individual must be an elected official with the exception of the municipal attorney, who must be elected or appointed.

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# Speaking of Retirement

## Important Announcements from the ERS

### **RSA Web Site Updated**

The Retirement Systems of Alabama launched its updated Web site ([www.rsa.state.al.us](http://www.rsa.state.al.us)) in August. The ERS strongly encourages its members and member agencies to browse this user-friendly site because of the tremendous amount of useful information and interactive tools available, including:

**Retirement Benefit Estimate and DROP Calculator** – Estimate your retirement benefits with all options. If you are eligible for DROP, you can estimate what your benefits would be after completing DROP.

**Contact Us** – How to contact the RSA by mail, phone, and fax, plus a map and directions to RSA Headquarters. Also included are e-mail addresses and extensions of the different departments you may need to contact directly. We ask that when you do send an e-mail, please include your full name, employer, home mailing address and daytime phone number.

**PEIRAF and RSA-1 Deferred Compensation Plan** – Monthly earnings and 12-Month Historical returns are listed here. Information on how to supplement your retirement income with RSA-1 is included as well.

**Investments** – Go here to find the latest performance results and how the ERS fund is invested.

**Publications and Forms** – All the RSA publications such as your Member Handbook can be easily downloaded from the Web site as well as retirement forms, DROP forms, RSA-1 forms and purchasing service credit forms.

**Legislation** – You can keep informed of the latest developments concerning your retirement and insurance benefits while the Alabama Legislature is in session.

**Agency Information** – Agency seminar information, the Agency Service Manual, the Contributions Reporting

Application, and any updates and news pertaining to employee benefit changes.

**Retirement Planning** – Information and schedules for Retirement Preparation Seminars and Individual Counseling Services.

ERS Individual Member Counseling Sessions 2003-2004

The schedule for ERS Individual Member Counseling Sessions was released in August. The dates are posted on the RSA Web site and were sent to each agency's personnel and payroll office. These sessions are for 20 minutes and are reserved for members within **three** years of retirement.

To make an appointment, please call 1-800-214-2158, press 9. To speak directly to an ERS Counselor, please call 1-800-214-2158, press 4 then press 7.

### **ERS Board of Control Election**

Candidates are now being sought for the Elected Local Employee Position No. 1 on the ERS Board of Control. Mr. T. M. "Sonny" Jones is now employed in a new position that makes him ineligible to retain his current position on the Board.

Nominees must be active members of the ERS by virtue of employment with a local agency (city, county, public or quasi-public agency). This position is to complete Mr. Jones' four-year term, which began October 1, 2002, and ends September 30, 2006.

Nomination packets are available on our Web site or by calling the elections coordinator at 1-800-214-2158 extension 573. The completed petition must be returned to the ERS office by 5:00 p.m., October 20, 2003.

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Prepared by the Communications staff of the Retirement Systems of Alabama. To have your questions answered in "Speaking of Retirement", please address them to:  
Mike Pegues, Communications, Retirement Systems of Alabama, 135 South Union St., P. O. Box 302150, Montgomery, Alabama 36130-2150.

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