

1 HB404  
2 116168-1  
3 By Representatives Canfield, Williams (J) and DeMarco  
4 RFD: County and Municipal Government  
5 First Read: 21-JAN-10

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8 SYNOPSIS: Under existing law, a Class 6 municipality  
9 may opt to adopt a council-manager form of  
10 government that provides for a five-member council  
11 with the mayor and one council member elected at  
12 large and the remaining three council members  
13 elected from districts. This change must be  
14 initiated by petition of qualified electors and  
15 requires a referendum. At various times, existing  
16 law has provided alternate methods of limited  
17 duration for adopting a council-manager form of  
18 government in Class 6 municipalities. One alternate  
19 method provided a one-time provision in 1983 for an  
20 election in certain Class 6 municipalities to  
21 convert to a council-manager form of government  
22 that did not have to be initiated by petition of  
23 qualified electors. This alternate method provided  
24 for a nine-member council consisting of a mayor  
25 elected at large and eight council members elected  
26 from four dual-member districts. Another alternate  
27 method provided for a council initiated change,

1 required a referendum, and provided for a mayor  
2 elected at large and seven council members elected  
3 by districts. This change had to be approved at a  
4 referendum held between October 1991 and March  
5 1992.

6 This bill would provide an additional method  
7 by which a Class 6 municipality could convert to a  
8 council-manager form of government. This bill would  
9 authorize the governing body of a Class 6  
10 municipality, by resolution and without the  
11 requirement of a petition, to call an election on  
12 the adoption of a council-manager form of  
13 government with a five-member council consisting of  
14 a mayor and four council members elected at large.  
15 This bill would provide a specific time period in  
16 which a municipality could call an election on the  
17 adoption of a council-manager form of government  
18 using this method. This bill would provide a  
19 specific time for the term of office of the council  
20 in municipalities electing to adopt this alternate  
21 method of conversation.

22  
23 A BILL  
24 TO BE ENTITLED  
25 AN ACT  
26

1           To amend Sections 11-43A-3.1, 11-43A-3.2, 11-43A-7,  
2           11-43A-8, 11-43A-9, 11-43A-14, 11-43A-16, 11-43A-18, and  
3           11-43A-32, Code of Alabama 1975; to provide an alternate  
4           method for adopting a council-manager form of government in  
5           certain Class 6 municipalities; to provide for a five-member  
6           council with a mayor and four council members elected at  
7           large; to provide that the council of certain Class 6  
8           municipalities, by resolution and without petition, could call  
9           for an election on the adoption of a council-manager form of  
10          government using the alternate method; to provide a limited  
11          period of time in which the alternate method may be used; and  
12          to provide for the term of office of the council.

13         BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14                 Section 1. Sections 11-43A-3.1, 11-43A-3.2,  
15                 11-43A-7, 11-43A-8, 11-43A-9, 11-43A-14, 11-43A-16, 11-43A-18,  
16                 and 11-43A-32, Code of Alabama 1975, are amended to read as  
17                 follows:

18                 "§11-43A-3.1.

19                 "(a) Any law to the contrary notwithstanding, an  
20                 election shall be held in every Class 6 municipality wherein  
21                 the municipal governing body has elected to have a nine-member  
22                 council, at the same time that the election for members of the  
23                 Alabama legislature is held in 1983; and the question  
24                 submitted at such election shall be: "shall the  
25                 council-manager form of government, provided in the  
26                 Council-Manager Act of 1982, with the change in the form of  
27                 government of such municipality to become operative on the

1 first Monday in October 1986, be adopted for the municipality  
2 of \_\_\_\_\_?" The election shall be held and in all things  
3 governed as nearly as possible by the provisions regulating  
4 elections on the question the adoption of the council-manager  
5 form of government provided in the Council-Manager Act of  
6 1982, except that no petition of any of the qualified voters  
7 of the municipality need be filed and the mayor of any city in  
8 which such election is hereby required shall within 10 days  
9 after July 26, 1983, by proclamation, submit the question of  
10 the adoption of the council-manager plan at a special election  
11 to be held at the same time as the election held in 1983 for  
12 members of the Alabama legislature. Should the election not be  
13 called by proclamation of the mayor within said 10-day period,  
14 the judge of probate shall call such election by order.

15 "(b) Any law to the contrary notwithstanding, before  
16 January 1, 2011, an election shall be held in every Class 6  
17 municipality wherein the municipal governing body has elected  
18 to have a five-member council with the mayor and four council  
19 members elected in an at-large election. The question  
20 submitted at the election shall be "shall the municipality of  
21 \_\_\_\_\_ adopt a council-manager form of government provided  
22 in the Council-Manager Act of 1982, as amended, consisting of  
23 a mayor and four council members elected in an at-large  
24 election to become operative on the first Monday in November  
25 2012?" No petition of any of the qualified voters of the  
26 municipality need be filed. The mayor of any municipality in  
27 which an election is hereby required, by proclamation within

1 10 days of the election by the governing body, shall submit  
2 the question of the adoption of the council-manager plan at a  
3 special election to be held before January 1, 2011. Should the  
4 mayor, by proclamation within the 10-day period, fail to call  
5 the election, the judge of probate shall call the election by  
6 order.

7 "§11-43A-3.2.

8 "The provisions of section 11-43A-3.1, authorizing  
9 an election in certain Class 6 municipalities in 1983 or 2010  
10 on the question of the adoption of the council-manager form of  
11 government provided in the Council-Manager Act of 1982 and  
12 providing for the effective date of such change if the  
13 council-manager form of government is approved, shall  
14 supersede all other laws in conflict herewith only for the  
15 purpose of holding the election in 1983 or 2010 and making the  
16 change in the form of government approved at such election;  
17 when such purposes have been effectuated it shall have no  
18 further force or effect.

19 "§11-43A-7.

20 "(a) The change in the form of government shall take  
21 place on the first Monday in October following the date of the  
22 next ensuing municipal election for the election of members of  
23 the governing body held by the municipality during a general  
24 municipal election year as established by Section 11-46-21,  
25 except in Class 6 cities wherein the municipal governing body  
26 has elected to have a nine-member council as authorized in  
27 Section 11-43A-8; and in such cities the change in the form of

1 government may take place on the first Monday in October in  
2 any even-numbered year, designated therefor by the municipal  
3 governing body unless the election approving such change was  
4 held in 1983, in which case the change shall take place on the  
5 first Monday in October 1986.

6 "(b) Notwithstanding subsection (a), in Class 6  
7 municipalities wherein the governing body has elected to have  
8 a five-member council as authorized in subsection (c) of  
9 Section 11-43A-8, the election approving the change in the  
10 form of government shall be held before January 1, 2011, and  
11 the change shall take place on the first Monday in November  
12 2012.

13 "§11-43A-8.

14 "(a) The governing body provided for herein shall be  
15 known collectively as the "Council of the City (Town) of \_\_\_\_\_  
16 (name of city or town to be inserted)" and shall have the  
17 powers and duties hereinafter provided. Except as hereinafter  
18 provided, the council shall have five members. One member  
19 shall be the mayor, elected by the voters at large, to preside  
20 over the deliberations of the council. One member shall be a  
21 council member elected by the voters at large. Three members  
22 shall be council members elected by the voters from each of  
23 three single-member districts. The council first elected shall  
24 qualify and take office on the first Monday in October  
25 following the date of the next ensuing municipal election held  
26 for the election of members of a municipal governing body  
27 during a general municipal election year.

1           "(b) In Class 6 cities the municipal governing body,  
2 by resolution, may elect to have the council composed and  
3 elected as above prescribed or to have the alternate form as  
4 hereinafter prescribed. If the municipal governing body, by  
5 resolution, elects to have the alternate form, it shall  
6 immediately notify the judge of probate, who shall have the  
7 ballots for the election, authorized in section 11-43A-3,  
8 prepared to pose the question of the adoption of the alternate  
9 form of government authorized in this section. The council  
10 shall have nine members. One member shall be the mayor, who  
11 shall be a voting member, elected by the voters at large, to  
12 preside over the deliberations of the council. Eight members  
13 shall be council members elected by the voters, two from each  
14 of four dual-member districts. The council first elected shall  
15 qualify and take office on the first Monday in October in an  
16 even-numbered year designated by the municipal governing body  
17 unless the election approving the change in the form of  
18 government was held in 1983, in which case such council shall  
19 qualify and take office on the first Monday in October 1986.

20           "(c) In Class 6 municipalities, the municipal  
21 governing body, by resolution, may elect to have an alternate  
22 form of government prescribed in this subsection. If the  
23 municipal governing body, by resolution, elects to have the  
24 alternate form prescribed in this subsection, it shall  
25 immediately notify the judge of probate, who shall have the  
26 ballots for the election authorized in Section 11-43A-3  
27 prepared to pose the question of the adoption of the alternate



1 form of government prescribed in this subsection. If the  
2 voters elect to adopt the form of government authorized by  
3 this subsection, the council shall take office on the first  
4 Monday in November 2012. The council shall have five members.  
5 One member shall be the mayor, who shall be a voting member,  
6 elected by the voters at large to preside over the council.  
7 Four members shall be council members elected by the voters at  
8 large. The mayor shall serve as president of the council and  
9 the council shall elect one of its members to serve as the pro  
10 tempore.

11 "(d) Subsequent to the seating of the initial  
12 council, the next council shall be elected at an election to  
13 be held in accordance with provisions of the general municipal  
14 election laws.

15 "§11-43A-9.

16 "(a) In all cities to which this section applies,  
17 except Class 6 cities wherein the municipal governing body has  
18 elected to have a nine-member council or a five-member council  
19 elected at large, as authorized in Section 11-43A-8, the  
20 election for the first officers of the municipality shall be  
21 held on the same date as the date of election for the next  
22 ensuing general municipal election. Before such election the  
23 governing body of the municipality shall cause the  
24 municipality to be divided into three districts containing as  
25 nearly an equal number of people as possible. Candidates shall  
26 qualify in the manner prescribed in the general municipal  
27 election laws and shall have the qualifications and

1 eligibility set forth therein. Each candidate shall announce  
2 that he or she is to become a candidate for mayor, or  
3 councilman-at-large, or if he or she desires to become a  
4 candidate for one of the three district posts, either district  
5 post 1, district post 2, or district post 3. A candidate for a  
6 district position shall reside in his or her district. Each  
7 voter in the election may cast one vote for a candidate for  
8 mayor, one vote for a councilman-at-large, and one vote for  
9 the candidate from the district in which he or she resides.  
10 Any candidate receiving a majority of the total votes cast for  
11 mayor, councilman-at-large, district post 1, district post 2,  
12 and district post 3 shall be elected. In the event no  
13 candidate receives a majority for a place on the council there  
14 shall be a runoff election for such place held in the manner  
15 prescribed by the general municipal election laws. The  
16 councilmen elected shall take office as herein provided. Each  
17 councilman shall hold office for four years and shall serve  
18 until his or her successor shall have been elected and  
19 qualified.

20           "(b) In Class 6 cities wherein the municipal  
21 governing body has elected to have a nine-member council as  
22 authorized in Section 11-43A-8, the election for the first  
23 officers of the municipality shall be held on the same date as  
24 the date of election for the next ensuing general municipal  
25 election. Before such election the governing body of the  
26 municipality shall cause the municipality to be divided into  
27 four districts containing as nearly an equal number of people

1 as possible. Candidates shall qualify in the manner prescribed  
2 in the general municipal election laws and shall have the  
3 qualifications and eligibility set forth therein. Each  
4 candidate shall announce that he or she is to become a  
5 candidate for mayor, or if he or she desires to become a  
6 candidate for one of the eight district posts, either district  
7 1 post 1, district 1 post 2, district 2 post 1, district 2  
8 post 2, district 3 post 1, district 3 post 2, district 4 post  
9 1, or district 4 post 2. A candidate for a district position  
10 shall reside in his or her district. The municipal governing  
11 body shall have the authority by ordinance to establish  
12 geographic boundaries of approximately equal population for  
13 each of the two posts in any or all of the four districts. The  
14 ordinance of the city required by the preceding sentence shall  
15 be adopted no later than 75 days prior to the date of the  
16 election with respect to which the establishment of districts  
17 is to be effective. In establishing any such posts within a  
18 district, the city shall not be required to comply with  
19 Section 11-43A-33 except with respect to elections held  
20 subsequent to the publication of a federal census or  
21 population subsequent to the 1990 federal census of  
22 population. Each voter in the election may cast one vote for a  
23 candidate for mayor and one vote for a candidate for each of  
24 the two posts for the district in which he or she resides  
25 unless the municipal governing body has designated geographic  
26 boundaries for the two posts in a district. If the governing  
27 body has designated by ordinance geographic post boundaries

1 for a district, then each voter within that district may cast  
2 one vote for a candidate for the post position within the  
3 district geographic boundaries where he or she resides. Any  
4 candidate receiving a majority of the total votes cast for  
5 mayor, or for a district post shall be elected. In the event  
6 no candidate receives a majority for a place on the council  
7 there shall be a runoff election for such place held in the  
8 manner prescribed by the general municipal election laws. The  
9 councilmen elected shall take office as herein provided.  
10 Councilmen elected hereunder, each, shall hold office for four  
11 years and shall serve until his or her successor shall have  
12 been elected and qualified.

13 "§11-43A-14.

14 "At every such election all ballots to be used by  
15 the voters shall be printed and prepared by the municipality  
16 and shall contain the names of all candidates seeking election  
17 to the office of mayor, councilman-at-large, or one of the  
18 three district council seats except that in all Class 6 cities  
19 wherein the municipal governing body has elected to have a  
20 nine-member council as authorized and in Class 6 cities  
21 wherein the municipal governing body has elected to have a  
22 five-member council elected at large, as authorized in section  
23 subsection (c) of Section 11-43A-8, ~~supra~~, the ballot shall  
24 contain the names of all candidates seeking election to the  
25 office of mayor, or to each post in one of the four council  
26 districts.

1           "The ballot shall conform, as nearly as can be, to  
2 the ballot prescribed in the general municipal election laws  
3 and the election shall be conducted as nearly as can be as  
4 prescribed by such laws.

5           "§11-43A-16.

6           "The mayor shall preside at the meetings of the  
7 council and shall be recognized as the head of the municipal  
8 government for all ceremonial purposes and by the governor for  
9 purpose of military law, but shall have no other  
10 administrative duties. In all cities to which this section  
11 applies, except Class 6 cities wherein the municipal governing  
12 body has elected to have ~~a nine-member council~~ an alternate  
13 form, as authorized in ~~section~~ subsections (b) and (c) of  
14 Section 11-43A-8, supra, the councilman-at-large shall be  
15 assistant mayor and shall act as mayor during the absence or  
16 disability of the mayor. Any vacancy in the office of the  
17 mayor shall be filled by the councilman-at-large. In such  
18 Class 6 cities, a mayor pro tem shall be elected from the  
19 membership by a majority vote of the council at its first  
20 meeting following its election. The mayor pro tem shall act as  
21 mayor during the absence or disability of the mayor. Any  
22 vacancy in the office of the mayor shall be filled by the  
23 mayor pro tem. Any vacancies on the council, except that of  
24 the office of mayor, shall be filled by the council at the  
25 next regular meeting of the council following the date of the  
26 vacancy. The election of a new councilman shall require the  
27 affirmative vote of at least three members in all cities to

1 which this section applies, except Class 6 cities wherein the  
2 municipal governing body has elected to have ~~a nine-member~~  
3 ~~council~~ an alternate form, as authorized in ~~section~~  
4 subsections (b) and (c) of Section 11-43A-8, supra, and in  
5 such. In Class 6 cities such wherein the municipal governing  
6 body has elected to have a nine-member council, election shall  
7 require the affirmative vote of five members. In Class 6  
8 cities wherein the municipal governing body has elected to  
9 have a five-member council elected at large, the election  
10 shall require the affirmative vote of three members. A vacancy  
11 in one of the district council seats shall be filled by a  
12 person who shall reside within the district from whence the  
13 vacancy arose.

14 "§11-43A-18.

15 "The council, by a majority vote of the whole  
16 qualified membership of the council, shall appoint a city  
17 manager, who shall be an officer of the city, and shall have  
18 the powers to perform the duties in this chapter provided. No  
19 councilman shall receive such appointment during the term for  
20 which ~~he~~ the council member shall have been elected nor within  
21 one year after expiration of ~~his~~ the term. Any civil service  
22 act, applicable to the municipality, shall not apply to the  
23 appointment or the removal of the city manager.

24 "A temporary acting city manager may be designated  
25 by the council to serve for not more than four months in these  
26 events, but only in these events: (1) When the first council

1 takes office after adoption of this article or (2) following  
2 the removal of any permanent city manager.

3 "Such temporary acting city manager shall perform  
4 the duties and assume the obligations of the office of city  
5 manager and may be removed by the council at any time. If the  
6 council shall permit the temporary acting manager to serve for  
7 longer than four months, he shall become the permanent city  
8 manager.

9 "Any person appointed as acting city manager or as  
10 city manager need not be a resident of the city nor a resident  
11 of the State of Alabama at the time of ~~his~~ appointment.

12 "The council shall appoint the city manager for an  
13 indefinite term, but the council may remove ~~him~~ the manager at  
14 any time by a majority vote of the whole qualified membership  
15 of the council. However, in any Class 6 city in which the  
16 governing body ~~has elected to have a nine-member council, as~~  
17 ~~authorized in~~ is organized as provided in subsections (b) and  
18 (c) of Section 11-43A-8, supra, any such removal shall be  
19 subject to any agreements contained in a contract between the  
20 council and the city manager.

21 "Neither the council nor any of its members shall  
22 direct or request the appointment of any person to, or his  
23 removal from, office by the city manager, or in any manner  
24 take part in the appointment or removal of officers and  
25 employees in the administrative service to the city. Except  
26 for the purpose of inquiry, the mayor and the members of the  
27 council shall deal with the administrative service only

1 through the city manager and neither the mayor nor any member  
2 of the council shall give orders to any subordinates of the  
3 city manager, either publicly or privately. The mayor or any  
4 member of the council violating the provisions of this section  
5 or voting for a resolution or ordinance in violation of this  
6 section shall be guilty of a Class C misdemeanor. Upon  
7 conviction of a second violation of this section, the person  
8 so convicted shall forfeit his office.

9 "§11-43A-32.

10 "In all cities to which this section applies, except  
11 Class 6 cities in which the municipal governing body has  
12 elected to have a nine-member council, and Class 6 cities in  
13 which the municipal governing body has elected to have a  
14 five-member council elected at large, as authorized in  
15 subsections (b) and (c) of Section 11-43A-8, supra, there  
16 shall be established three council districts to be designated  
17 respectively as district post 1, district post 2, and district  
18 post 3, and in such Class 6 cities, there shall be established  
19 four council districts with eight district posts to be  
20 designated district 1 post 1, district 1 post 2, district 2  
21 post 1, district 2 post 2, district 3 post 1, district 3 post  
22 2, district 4 post 1, and district 4 post 2. Such districts  
23 shall have, as nearly as is reasonable, the same population.  
24 The designation and boundaries of the initial council  
25 districts shall be specifically described and set forth. In  
26 all cities to which this section applies, except the  
27 above-described Class 6 cities, the two at-large posts on the



1 council shall be designated as mayor and councilman-at-large;  
2 and in such Class 6 cities the one at-large post on the  
3 council shall be designated as mayor."

4 Section 2. This act shall become effective  
5 immediately following its passage and approval by the  
6 Governor, or its otherwise becoming law.