OVERVIEW OF AMENDMENT 4:

COUNTY COMMISSION ADMINISTRATIVE POWERS

Amendment 4 authorizes the county commission in all counties except Jefferson County to administratively establish certain programs, policies, and procedures (hereinafter “programs”) providing for the administration of the county’s affairs without having a specific general law on the subject and without the need for passage of a local law. The intent of this amendment is to more broadly grant the county commission administrative decision-making authority on issues directly affecting the operation of county government. Providing this authority will allow counties to implement important programs more expeditiously and efficiently by eliminating the need to seek legislative approval for taking administrative action in the best interest of the county.

As outlined below, Amendment 4 only allows for the administrative development and establishment of programs in certain areas as identified in the amendment. Additionally, there are several specific limitations and prohibitions set out in the amendment. The amendment also provides specific procedures to follow when considering implementation of any of the administrative programs authorized in the amendment.

**RESTRICTIONS AND PROHIBITIONS**

This new constitutional authority does not allow the county to establish programs, policies, or procedures that are specifically prohibited by the constitution or by general or local law. Additionally, the county cannot use the authority in the amendment to supersede, amend, or repeal an existing local law. Amendment 4 also includes the following specific prohibitions and limitations:

**No Taxes or Fees**

The amendment prohibits the county commission from using its administrative powers to levy or assess a tax or fee or to increase the rate of any tax or fee previously established.

**No Policies affecting Property Rights**

The county commission cannot establish any program that would infringe on a citizen's rights with respect to the use of his or her private property. This prohibition also applies to business entities and business property.

This means that the county cannot use these powers to establish planning and zoning rules or other policies that might regulate or affect a citizen’s use of private property. However, this amendment has no impact on regulatory authority currently found in state law, such as the authority to regulate subdivision development or establish building codes. It also does not affect any planning and zoning authority a county may have established by local law.

**No Impact on Local Officials or their Constitutional or Statutory Functions**

While Amendment 4 does allow the county commission to establish programs operated by other county officials with the participation and consent of those officials, the amendment specifically prohibits limiting, altering, or otherwise impacting the constitutional, statutory, or administrative duties, powers, or responsibilities of any other elected officials.

Additionally, the county commission cannot utilize this authority to establish, increase, or decrease any elected official’s compensation or expense allowance. The commission is also prohibited from altering an elected official’s term of office.

**ADMINISTRATIVE AUTHORITY GRANTED**

Amendment 4 grants the county commission administrative powers to establish programs, policies, and procedures in several broad “categories”, each discussed separately below:

**Personnel Matters**

While most counties currently have county personnel policies and procedures that have been established by local law or county commission resolution, Amendment 4 grants counties broader and more clear authority to address personnel matters even where there is not a specific state or local law authorizing such programs. The amendment specifically authorizes counties to:

-- Establish a county personnel system

-- Provide for employee benefits

-- Give a deputy his or her badge and pistol upon retirement

-- Create employee incentive programs on matters such as attendance, performance, or safety

-- Create retirement incentive programs

-- Create employee recognition and appreciation programs

With this grant of authority, counties will have more flexibility to establish programs designed to improve safety in the workplace or provide incentives for employees who meet or exceed certain standards of attendance or performance. Counties will also be able to more easily develop programs encouraging employees to offer suggestions for efficiency and innovation.

Counties may now provide a wider variety of benefits to county employees without concern for whether there is any statutory authority to support offering the benefit. And while the attorney general’s office has consistently held that counties could offer retirement incentive programs to their seasoned employees, this amendment will provide greater flexibility and certainty in developing and implementing such programs.

**Community Programs for Litter Control**

Amendment 4 authorizes counties to establish programs aimed at providing for litter-free highways and other public property and facilities. This important authority will allow counties to more creatively establish community programs to address the ever-growing litter problems in rural areas without concern for whether there is a state statute authorizing the program or passing a local law creating the program. This could include “adopt a mile” programs or citizen-involved clean-up projects. The amendment does not allow the county to establish penalties or set fines for littering. However, the powers granted can be used to establish programs to remove litter from its roadways and property, and might help counties identify ways to better enforce existing state laws prohibiting littering (see, e.g., Ala. Code § 13A-7-29).

**Animal Control**

Amendment 4 also authorizes counties to establish programs related to control of animals and animal nuisances, although there are specific limitations on these powers included in the amendment. No programs shall be established which result in the destruction of an animal unless required by the public health laws of the state. Additionally, no programs can restrict the use of animals for any of the following purposes:

-- Hunting

-- Raising or keeping animals for sale or breeding

-- Raising or keeping animals for food or fiber production

-- Any farming operations

Under this authority, the county commission would be allowed to establish programs to effectively address animals running at large in unincorporated areas or to restrict dangerous animals from being kept in locations or under circumstances that endanger the public safety. Counties could also establish programs or policies requiring the removal of diseased or deceased animals that create a nuisance to the public.

**Public Transportation and Public Road Safety**

Amendment 4 grants counties fairly broad powers to address public transportation issues in the county and/or establish policies and procedures aimed at improving safety on county-maintained roads and bridges. The amendment states clearly that such programs cannot conflict with general law. However, this newly-established constitutional power will complement counties’ existing authority to oversee and supervise the roads and bridges in the county and will allow more flexibility in designing programs that provide for public transportation.

**Programs Related to County Offices**

Amendment 4 allows counties to develop and establish programs and policies related to the county commission and other offices of the county. This is an extremely beneficial grant of authority because it will eliminate the need for passage of local laws to implement programs designed to operate county government more efficiently or economically.

Examples of authorized programs set out in the amendment are:

-- Creation and operation of a one-stop tag program

-- Creation and operation of a commissary or “jail store” at the county jail

-- Procedures for disposal of unclaimed property

-- Management of the county highway department

-- Automation of county activities

The amendment does require that the county commission have the written consent and cooperation of any affected elected official for the implementation of programs involving the operation of the elected official’s office. This means, for example, that if the county wants to implement a program where citizens can apply for all tags and licenses in one office, the probate judge and revenue commissioner must agree to creation of the program and participate in its development.

The authority to establish programs such as those set out here should serve to benefit other local elected officials as well as the county commission, since this will allow these officials to work with the county commission on implementation of innovative programs and procedures aimed at developing a more efficient or economical operation of their offices. Working together, the county commission and other elected officials will be able to more easily incorporate new technology and up-to-date business practices into the operation of county offices because many new programs can be implemented administratively.

**Emergency Assistance Programs**

Amendment 4 authorizes counties to establish programs related to ambulance service and improving county emergency management services. With this amendment, counties will be able to establish more efficient debris removal procedures, better plan for constructing and utilizing shelters and safe houses, and more efficiently implement procedures for warning and preparing citizens for impending disasters.

PROCEDURES FOR IMPLEMENTING PROGRAMS UNDER AMENDMENT 4

Amendment 4 sets out specific procedures for adopting any programs, policies, or procedures (hereinafter “programs”) pursuant to the authority granted by the amendment. An outline of those procedures is set out below:

**Notice of Proposed Action**

Before considering adoption of a proposed new or amended program authorized under Amendment 4, the county must provide notice to the public in the following ways:

1. Announcing at a regular county commission meeting that the matter will be on the agenda for the next regularly-scheduled commission meeting and that members of the public will be granted an opportunity to be heard on the matter at this upcoming meeting.

-- The amendment specifically requires that this announcement be made at the meeting immediately preceding the meeting at which the commission will consider the matter.

1. Providing notice of the meeting in compliance with Ala. Code § 11-3-8(a), the section providing notice requirements for regular commission meetings.

-- There is no requirement for special written notice that this matter will be on the agenda.

**Public Hearing on Proposed Action**

Amendment 4 requires that the county commission grant members of the public an opportunity to be heard on any proposed program the commission is considering under the authority granted in Amendment 4 at the regular meeting in which the proposed program will be considered. There is no requirement that there be a separate public hearing. In fact, the amendment requires that public comment be allowed during the meeting at which the commission plans to consider the matter. Therefore, while the commission can certainly hold a separate public hearing if it so desires, it is required to allow members of the public to be heard on the proposed program at any county commission meeting where the matter will be considered by the body.

**Consideration at Regular County Commission Meeting**

Amendment 4 requires that any program proposed pursuant to this amendment be voted on only at a regular meeting of the county commission. The county cannot consider or vote on a proposed program during a special or emergency meeting.

In the event action on a proposed program on a commission agenda is tabled or postponed for any reason, it will be necessary for the county commission to repeat the notice and public comment process set out above when and if it plans to further consider the matter. This means that the commission will need to again announce at the appropriate regular meeting that the matter will be on the agenda for the next regular commission meeting. And the commission will need to allow for public comment at the regular meeting where the program will be further considered by the commission.

**ALABAMA CONSTITUTIONAL AMENDMENT 909**

(a) Except where otherwise provided for or specifically prohibited by the constitution or by general or local law and subject to the limitations set forth herein, the county commission of each county in this state may exercise those powers necessary to provide for the administration of the affairs of the county through the programs, policies, and procedures described in subsection (b), subject to the limitations set forth in subsection (c).

(b) Subject to the limitations of subsections (a) and (c), each county commission in the state may establish:

(1) Programs, policies, and procedures relating to county personnel, including: Establishment of a county personnel system; the provision of employee benefits; allowing a deputy to be given his or her badge and pistol upon retirement; creating employee incentive programs related to matters such as attendance, performance, and safety; creating incentive programs related to the retirement of county employees; and creating employee recognition and appreciation programs.

(2) Community programs to provide for litter-free roadways and public facilities and public property and subject to any limitations in general law, programs related to control of animals and animal nuisances, provided no programs shall: a. result in the destruction of an animal unless required by the public health laws of the state; or b. relate to or restrict the use of animals for hunting purposes or the use of animals being raised for sale or kept for breeding, food or fiber production purposes, or otherwise used in connection with farming, poultry and egg, dairy, livestock, and other agricultural or farming operations.

(3) Programs related to public transportation and programs to promote and encourage safety when using public roads and rights-of-way, provided the programs do not in any way conflict with general law.

(4) Programs related to county offices, including one-stop tag programs; commissaries for inmates at the county jail; disposal of unclaimed personal property in the custody of the county; management of the county highway department; automation of county activities; and establishment of unit or district systems for the maintenance of county roads and bridges. Programs involving the operation of the office of an elected county official may only be established pursuant to this subdivision with the written consent and cooperation of the elected official charged by law with the responsibility for the administration of the office.

(5) Emergency assistance programs, including programs related to ambulance service and programs to improve county emergency management services.

(c) Nothing in this amendment may be construed to provide a county commission any authority to levy or assess a tax or fee or to increase the rate of any tax or fee previously established, or to establish any program that would infringe on a citizen's rights with respect to the use of his or her private property or infringe on a right of a business entity with respect to its private property. Except as authorized in subdivision (4) of subsection (b), nothing in this amendment shall authorize the county commission to limit, alter, or otherwise impact the constitutional, statutory, or administrative duties, powers, or responsibilities of any other elected officials or to establish, increase, or decrease any compensation, term of office, or expense allowance for any elected officials of the county.

(d) Any programs, policies, or procedures proposed for adoption by the county commission pursuant to the authority granted under subsection (a) shall only be voted on at a regular meeting of the county commission. Prior to the adoption of the programs, policies, and procedures, the county commission shall provide notice of its intention to consider the matter by announcing at a regular county commission meeting that the matter will be on the agenda at the next regular meeting of the county commission and that any members of the public desiring to be heard on the matter will be granted that opportunity at the meeting where the matter will be considered. Notice of the meeting at which the matter will be considered by the county commission shall be given in compliance with the notice requirements for county commissions provided in the general law. Nothing herein shall authorize a county commission to supersede, amend, or repel an existing local law.

(e) The provisions of this amendment shall not apply to Jefferson County.