



Robert L. McCurley, Jr.

# The Alabama Legislature

## Special Session

The Alabama legislature was called into special session February 26, 2007 by Governor Riley to consider:

1. A constitutional amendment to increase the total amount of bonding authority granted to the State of Alabama which would allow the state to increase its interest-bearing general obligation bonds as authorized under Amendment 666 of the *Constitution of Alabama* from \$350 million to \$750 million. HB-10 (Act 2007-5)
2. Letting the legislature authorize and direct the State of Alabama and members of the State Employees' Insurance Board and Public Education Employees' Health Board to create irrevocable trusts for the purposes of holding, investing and distributing assets to be used for certain post-employment benefits to be designated as the Alabama Retired State Employees' Healthcare Trust and the Alabama Retired Education Employees' Health Care Trust. It further would provide powers and responsibilities to the trustees and their management, and investing of the funds in these trusts. SB-3 (Act 2007-16)
3. Passing a constitutional amendment to require the assets, proceeds and income of the Alabama Retired State Employees' Health Trust and the Alabama Retired Education Employees' Health Care Trust to be used exclusively for providing health care benefits to retired state employees and retired education employees, and for no other purposes. SB-4 (Act 2007-7)
4. Passing any local legislation that requires consideration. (A constitutional amendment for Pritchard would establish an Alabama Foreign Trade Investment Zone which authorizes a special tax district for importing duty-free and quota-free articles eligible under the Federal Trade Laws. It also authorizes a special tax district for land and improvements taxed under single-site evaluation systems. SB-2 (ACT 2007-6))

The legislature accomplished these four items in a minimum of five legislative days, adjourning March 2<sup>nd</sup>, 2007.

## Regular Session, 2007

The Regular Session of the Alabama legislature began March 6<sup>th</sup> and continues until June 18<sup>th</sup>. In just the first week, 450



bills were introduced. The first bills considered and passed by the house of representatives were bills concerning PAC-to-PAC transfers and other ethics-related legislation.

The **Alabama Law Institute** prepared and introduced the following bills:

- **Apportionment of Estate Taxes** (See March 2007 *AL Lawyer*)  
SB-100 Sponsor: Senator Ted Little  
HB-56 Sponsor: Representative Cam Ward
- **Uniform Residential Mortgage Satisfaction Act** (See March 2007 *AL Lawyer*)  
SB-135 Sponsor: Senator Myron Penn  
HB-11 Sponsor: Representative Mike Hill
- **Redemption from Ad Valorem Tax Sales** (See below)  
SB-74 Sponsor: Senator Wendell Mitchell  
HB-12 Sponsor: Representative Mike Hill
- **Alabama Uniform Environmental Covenants Act** (See below)  
SB-91 Sponsor: Senator Rodger Smitherman  
HB-426 Sponsor: Representative Jeff McLaughlin

## Redemption from Ad Valorem Tax Sales

Some years ago, principally out-of-state investors began buying property which was being sold for the nonpayment of ad valorem taxes. A bidder could bid on not only the amount of the taxes due, but an additional amount, or “overbid,” and as a result, obtain the 12 percent interest allowed for redemption on both the amount of unpaid taxes and on the overbid.

In an effort to stop some of the abuses of overbidding, Section 40-10-122 was amended in 2002. However, other sections, namely sections 40-10-75, 76, 77, 78, 82, 83, and 120, should have also referenced the limitation of the amount of interest that could be paid on an overbid. As a result, interest of 12 percent is only allowed on an overbid of 15 percent of the fair market value of the property. This bill amends the other sections to clarify and codify the current law concerning the redemption of property from ad valorem tax sales.

Now to redeem, one must pay the amount paid at the tax sale plus interest of 12 percent on taxes paid and 12 percent on the overage bid that is not more than 15 percent of the fair market-value of the property. No interest is now allowed on an overbid above 15 percent of the assessed value of the property.

The bill also clarifies that a person has three years after the tax sale to redeem from the tax collector. There is another three-year period from the date that the purchaser was entitled to a tax deed that the landowner can redeem from the purchaser.

It further codifies the case law that provides an owner who remains in possession after the tax sale can always redeem. Finally, the bill provides a procedure for redemption by the landowner from multiple tax sales.

## Uniform Environmental Covenants Act

This Act is for the long-term enforcement of cleanup controls which will be contained in a statutorily-defined agreement known as an “environmental covenant” that is binding on subsequent purchasers of the property and filed in the local land records.

The fundamental purpose of this Act is to remove various legal barriers to the use of environmental restrictions and lessen liability concerns of sellers and lenders associated with the redevelopment and sale of “brownfields.” At the same time this requires the Department of Environmental Management’s approval of the remediation and control plan and gives notice to surrounding landowners, local governments and other parties in interest. This Act both protects human health and makes it economically feasible to reuse the property.

## What the Act Does

The Act provides a legal mechanism for long-term control of use and cleanup that will allow some properties to be safely returned to use so that it may be bought and sold. Current real property law is inadequate. Various common-law doctrines and other legal rules often work against such long-term controls, a situation which undermines the use and marketability of contaminated property. Cleanup, if possible, would often cost much more than the market value.

## Creates statutory legal framework called “environmental covenant”

Covenants are a means of creating restrictions on use of land. The Act creates an environmental covenant for the specific purpose of forever controlling the use of contaminated real estate while allowing that real estate to be conveyed from one person to another, subject to those controls. It does not affect the validity of prior recorded mortgages.

An environmental covenant is a specific recordable interest in real estate in response to environmental issues that arise under a federal or state law for the cleanup of the property or closure of a waste management site. No environmental covenant is effective without the Alabama Department of Environmental Management’s signature. The covenant recites the controls and remediation requirements imposed upon the property. The rights under the covenant must be granted to a party. The covenant is perpetual unless limited in time within the instrument.

Two principal policies are served by environmental covenants:

- A. It ensures that land use restrictions, mandated environmental monitoring requirements and engineering controls designed to control the potential environmental risk of residual contamination will be recorded in the land records and enforced over time.

B. It further allows the return of previously contaminated property to the stream of commerce. Currently, these properties do not attract interested buyers and remain vacant, blighted and unproductive. Large numbers of brownfields are unlikely to be successfully recycled until regulators, owners, responsible parties, affected communities, and prospective purchasers and their lenders become confident that environmental covenants will be properly drafted, implemented, monitored and enforced. This Act should encourage sale of property and re-use by offering a clear and objective process for creating, modifying or terminating environmental covenants and for recording these instruments which will appear in any title abstract for the property in question.

The Act applies to both federal- and state-led cleanups. It ensures that a covenant will survive despite tax lien foreclosure, adverse possession and marketable title statutes. The Act also provides detailed provisions regarding termination and amendment of covenants, and includes provisions on dealing with recorded interests that have priority over the new covenant. Any party to the covenant and appropriate agencies may enforce the covenant. Further, the Act offers guidance to courts confronted with a proceeding that seeks to terminate a covenant through eminent domain or the doctrine of changed circumstances.

The Act does not supplant or impose substantive cleanup standards, either generally or in a particular case. The Act

assumes those standards will have been developed in the prior regulatory process. Despite best efforts, total cleanups of many contaminated sites are not possible, but property may be put to limited uses without risk to others. The Act also does not affect the liability of principally responsible parties for the cleanup or any harm caused to third parties by the contamination. Rather, it provides a method for minimizing the exposure of third parties to such risks and for owners to engage in long-term cleanup mechanisms.

For more information, contact Bob McCurley, director, at P.O. Box 861425, Tuscaloosa 35486-0013; fax (205) 348-8411; phone (205) 348-7411; or Web site at [www.ali.state.al.us](http://www.ali.state.al.us). ■

*In the March 2007 "Legislative Wrap-Up," Senator Bradley Byrne of Baldwin County and Senator Hank Sanders of Selma were both misidentified. These are two of the outstanding lawyers in the Alabama legislature; we regret this error.*

**Robert L. McCurley, Jr.**

Robert L. McCurley, Jr. is the director of the Alabama Law Institute at the University of Alabama. He received his undergraduate and law degrees from the University.

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