

Constitutional Revision
17
ALABAMA

What is a state constitution?

A state constitution is the fundamental law of the state. It describes the values, hopes and visions of the people. Because it is the fundamental law, the people have the right to amend and revise their constitution.

The state constitution is a grant of power by the people to the government. It establishes an organization to exercise that power consisting of the departments of government, executive, legislative and judicial. It also contains limitation on the power of government in the form of restrictions on executive and legislative action and procedural requirement which must be observed in the exercise of power.

Alabama's Constitution

Alabama has had six constitutions with specific purposes for the adoption of each. The constitution of 1819 enabled Alabama to be admitted to the union. Next is the constitution of 1861 to take Alabama out of the Union. In 1865, a new constitution was adopted to foster Alabama's readmission to the Union under Congressional Reconstruction. Later, in 1868, a new constitution was submitted to the people. While the people of the state rejected it, Congress did adopt the constitution. In 1875, the yoke of Reconstruction was removed with the constitution known as the "Constitution of Redemption" or the "Constitution of Prohibition" because of its severe restrictions on the power of the legislature. Finally, in 1901, the state's present constitution was ratified.

Movement for Revision

Critics of the 1901 constitution began calling for revising or replacing that document soon after it was ratified. In 1915, Governor O'Neal called for revision, asserting that the 1901 constitution was outdated and cumbersome. In the early 1920s, Governor Kilby appointed a citizens' commission to recommend specific changes to the constitution citing similar concerns. In his two administrations, Governor James E. Folsom called numerous special sessions of the legislature, trying unsuccessfully to get that body to adopt a call for a constitutional convention.

continued, next page

The administration of Governor Albert P. Brewer saw the creation of a constitutional revision commission, headed by Shelby County Probate Judge Conrad M. Fowler, which recommended a new constitution to the legislature. Alabama's judicial article and an amendment providing annual sessions of the legislature were the only parts of the commission's recommendations approved by the legislature and then ratified by the people. During Governor Fob James' first administration, an entirely new constitution, based largely on the Fowler Commission report was introduced in the legislature but was not enacted.

During Governor George C. Wallace's last term, a new constitution passed the legislature, but before enactment, the courts held the method used for adopting the legislature's passage of the constitution was unconstitutional and, therefore, could not be submitted for ratification. Legislation introduced during the 2006 legislative session calling for the ratification of a constitutional convention to rewrite the constitution was also unsuccessful.

How may the constitution be revised?

There are two methods of revision provided in the Alabama constitution. Both require the people's approval, and both must go through the legislature.

1.) *Revision by amendment.* Section 284 of the Alabama constitution provides the procedure for amendment. Constitutional amendments are proposed by the legislature and must be passed in each house by a three-fifth's vote of all members elected to each house. The bill or resolution proposing the amendment must fix the date for an election on the amendment; notice of the election must be published in each county once a week for four successive weeks; the results of the election are tabulated by the secretary of state; and, if a majority of those voting on the amendment vote in favor, the governor proclaims the amendment ratified.

2) *Revision by a constitutional convention.* The legislature must pass a bill or resolution calling for an election on the question of whether to have a constitutional convention. In the bill or resolution, the legislature must fix the time and place for convening the convention, fix the number of delegates and method of their selection and may provide for the election of delegates at the same election. If a majority of the people who vote in the election vote in favor of a convention, they would then elect delegates in an election for that purpose unless the election for delegates is held at the same time as the election on the issue of calling a convention. In either event, the delegates who are selected will convene at the time set out in the legislation calling for the election, organize the convention, select convention officers and proceed with rewriting the constitution. The convention's proposed constitution must be submitted to the people for their approval. If a majority of those voting vote in favor of the proposed constitution, it will be ratified and will become the legally binding constitution replacing the present constitution. If a majority of the voters vote against ratification of the proposed constitution, it will be rejected and the present constitution will remain in effect.

What are some of the arguments for constitutional revision?

Proponents of constitutional revision cite numerous reasons: the 1901 constitution is a blatantly racist document; it is filled with constraints, prohibitions and restrictions which limit our government's ability to function effectively; it is the longest constitution in the world; it has been amended almost 800 times; it burdens our state's efforts to compete for new business and industry; and it is a constitution of legislative detail rather than a fundamental charter of government.

In the name of economy, the 1901 convention brought forward from the 1875 constitution the prohibition on public improvements: "The state shall not engage in works of internal improvement, nor lend its credit in aid of such; nor shall the state be interested in any private or corporate enterprise or lend money or its credit to any individual, association or corporation."

continued, next page

These restrictions meant that the constitution had to be amended to permit the state to engage in public works projects such as the state docks at Mobile and construction of roads and bridges. Over 100 amendments have been ratified authorizing state and local governments to engage in public improvements such as schools, libraries, hospitals and recreation facilities, as well as roads, bridges and docks facilities.

The lack of “home rule” is a major reason advanced for constitutional revision. The legislature has virtually absolute control over local government, particularly counties. Examples include the entire state’s having to approve constitutional amendments to allow Mobile County to have a mosquito control program and to authorize Limestone County to dispose of dead farm animals, as well as hundreds of other similar cases. Proponents contend that local officials are better able to make decisions affecting their constituents than the legislature with its responsibility for statewide issues.

Why the opposition?

Some opponents take a position against revision because they are fearful that many provisions of the present constitution which they favor might be omitted in a new constitution. Concern has been expressed that the Declaration of Rights in the present constitution might be changed and that references to God might be deleted. Others fear that limitations on taxing authority in the present constitution might be removed or modified so that the legislature could increase property or income taxes without a vote of the people.

Opposition to “home rule” may be evidence of reluctance on the part of legislators to give up power over local government in their districts. There are also special interest groups that enjoy good relations with legislators and are apprehensive about their ability to be as influential with local officials.

Reasons for Reform

- Longest constitution in the world; reduce number of amendments (presently over 700).
- Allow “home rule” at a county level for health, safety and taxation issues.
- Repeal sections 93 and 94, which would allow the state to engage in internal improvements.
- Allow municipalities to grant public money or lend money to private persons or corporations.
- Remove county and municipal limitations on overall ad valorem taxes.
- Remove county property tax limitations (county can raise taxes without vote).
- Allow budget flexibility.
- Present constitution hinders economic growth.
- Sixty-nine percent of the 1901 constitution’s first 555 amendments affect only one city or county.

Conclusion

Every citizen of Alabama is affected by the issue of constitutional reform. Fortunately, our present constitution assures that the people will be able to make the final decision about their fundamental law.

This brochure is published as a public service. Single copies are free upon request by contacting the Alabama State Bar at the phone numbers listed below or online at alabar.org.

The purpose of this brochure is to inform, not to advise.

Alabama State Bar
415 Dexter Avenue
Montgomery, Alabama 36104
800.354.6154
334.269.1515
www.alabar.org



ALABAMA
STATE BAR

12/06