

Old and in the Way: Alabama's 1901 Constitution

BACKGROUND

Born of White supremacy and amended more than 800 times, Alabama's 1901 constitution continues to tie the hands of local governments and frustrate those who would reform it. Supporters of a new constitution favor two competing ways of achieving that goal: Rewrite the document either article by article through the legislative process or all at once in a constitutional convention. In either case, the revisions would require approval by statewide referendum.

In 2010, the Legislature appointed a Constitutional Revision Commission and tasked it with rewriting most of the 1901 constitution on an article-by-article basis. The commission is prohibited from rewriting any of the parts of the constitution dealing with taxation.

Thus far, the commission has revised two articles, dealing with banking and corporations, which now will be submitted for approval to the Legislature and then the voters. The main effect of these revisions is to shorten the articles, removing some outdated language from each. After the 2012 legislative session, the commission will reconvene and examine articles dealing with home rule and education, among other issues.

The 1901 constitution vests nearly all power in the Legislature, rather than in governmental bodies closer to the people. As a result, county issues frequently require legislation in Montgomery. More than 70 percent of constitutional amendments apply to a single locality.

The constitution also generally prohibits state and local governments from participating in internal improvement or economic development activities. More than 50 amendments delegate powers to various governing bodies to promote economic development and invest in infrastructure improvements, but remaining provisions still hamper local economic development.

On average, most states earmark 22 percent of their revenues; Alabama earmarks almost 90 percent. This gives the governor and the Legislature little flexibility to match available resources to the most pressing needs.

HB 302, sponsored by Rep. Demetrius Newton, would let counties vote to acquire a limited form of home rule "in the areas of economic development, public safety and health, taxation, and land use regulation and control." **HB 357** and **HB 358**, sponsored by Rep. Paul DeMarco, are the two products of the constitution reform commission, revising and shortening the constitutional articles governing banking and corporations.

BOTTOM LINE:

- **Alabama's 1901 constitution is outdated and impairs effective local democracy.**
- **The Constitutional Revision Commission is unable to repair Alabama's constitutional provisions regarding taxation.**
- **Reforms to increase "home rule" also are needed.**