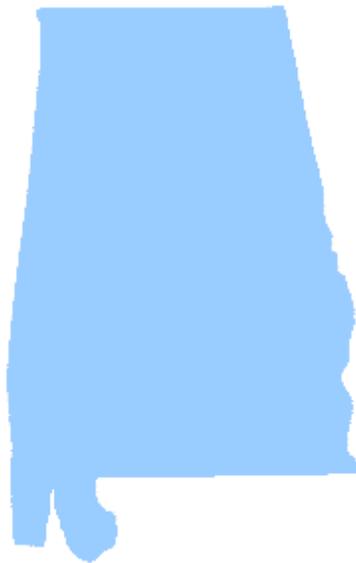


REPORT OF THE ALABAMA CITIZENS' COMMISSION ON CONSTITUTIONAL REFORM



SUBMITTED JANUARY 16, 2003
BY THE HONORABLE JIM BENNETT, CHAIR
SALLIE CREEL, VICE-CHAIR

Table of Contents

	Page
Introduction.....	3
Recommendations	
I. Local Democracy.....	7
II. Debt and Taxation.....	9
III. Government Organization.....	12
IV. Education.....	15
V. Economic Development.....	17
Appendix	
A. Commission Member Biographical Sketches.....	20

(Note: Please be advised the page numbers from this Internet version may not match the page numbers of other printed versions.)

Introduction

The Alabama Citizens' Commission on Constitutional Reform submits this report of its recommendations to the people of Alabama and to their elected leaders. We are an independent, privately funded body of 22 members, all volunteers, who come from many occupations and experiences. We are diverse as well in our ethnic backgrounds and in our geographical connections. Our chairman is Sec. of State Jim Bennett and our vice-chairman is businesswoman Sallie Creel of Birmingham.

This work represents six months of study and deliberations on the commission's part, with the support and technical guidance of nearly two dozen leading authorities within our state's universities and its legal profession. They include top political scientists and legal scholars, as well as retired justices of the state's Supreme Court. Many of the papers that these experts have prepared for the commission will be published in law reviews and similar journals, thereby providing an invaluable body of research to guide future reforms. Equally important, our commission has listened to extensive comments and concerns from citizens who spoke during the four meetings we held in different cities across Alabama.

Even this heavy commitment of time and energy did not permit our commission to cover every facet of constitutional reform in Alabama. For example, our report does not include any proposed changes to Article One of the 1901 Constitution, which contains a bill of rights for our citizens. While some of our members argue strongly for the inclusion of an equal protection clause within that article, this section of the Constitution does not cry for immediate attention, as do certain other parts. Moreover, the Alabama House of Representatives already has addressed the need to modernize certain antiquated language, including that found in several articles.

Therefore, our commission has concentrated its attention on matters that we believe are of pressing importance to our state's well-being. These proposed reforms will provide the framework for better government in Alabama. It is our commission's hope that our new governor and Legislature will stop at nothing short of comprehensive reform of the Alabama Constitution. In this regard, we want our state to be a model for our region and our nation, particularly as the national government increasingly shifts more responsibilities and challenges to the states and local governments.

Our recommendations are organized under five major headings. Before presenting our findings, however, we provide the following background on the origin and mission of our commission.

Gov. Thomas E. Kilby provided the inspiration for this civic service. In 1923, he asked the Legislature to appoint a diverse group of citizens to decide how best to write a new constitution. Like his predecessor Emmet O'Neal, he had concluded that the state's 1901 Constitution had missed its mark by addressing issues that had more to do with Reconstruction and the 19th century than modern Alabama.

Gov. Kilby wanted many points of view included on this citizens panel; so he called for appointing farmers, business people, lawyers, tradesmen and journalists. Under his proposal, these citizens would deliberate upon the issues and then make their recommendations. Only then would the Legislature call a convention or take other action to revise or rewrite the 1901 Constitution.

Had the Legislature adopted Kilby's plan, our state might have replaced its defective constitution and set Alabama on a different course. But many people who would have voted for a better future, including almost all African-Americans and many working class whites, had lost their right to vote under the 1901 Constitution. The Legislature, beholden for the most part to powerful landed and industrial interests who benefited from the present constitution's stingy restrictions, felt safe to let this opportunity slip away.

In 1969, Gov. Albert Brewer, who had recently succeeded the late Lurleen Wallace as governor, resuscitated the idea. He prevailed upon legislators to create a constitutional commission. The difference was that this group was charged with actually drafting a new document, as opposed to simply making recommendations.

Under the leadership of Probate Judge Conrad Fowler of Shelby County, the Alabama Constitutional Commission wrote a remarkably good document and presented it to the Legislature in 1973. But for reasons that had much to do with the political ambitions of the new governor, George Wallace, its good work went largely ignored. The only exception at the time was that the Legislature did propose an amendment that reorganized the judicial branch and voters approved it. Our report incorporates many of the ideas and in the education section adopts actual language proposed by the Brewer Commission.

Though Brewer failed to win re-election in 1970, after suffering some of the most outrageous slanders in our state's political history, Brewer went on to enjoy the status of senior statesman. In that role, he has been a constant voice for constitutional reform.

In December, 2001, he suggested the time was ripe for reviving Kilby's idea for a citizens' commission to study the state's 1901 Constitution. Unlike in Kilby's time, a constituency was growing among Alabamians for major reform. Also, voting rights had been restored through federal action to those groups disenfranchised by the 1901 Constitution. The public was learning through newspapers, broadcast programs and rallies how that document's many deficiencies held back Alabama. Moreover, severe cuts in school budgets and mounting frustration with Alabama's poor showing in comparison with more progressive states augured well for change.

Why not launch a citizens' commission now, Brewer asked, rather than wait for the Legislature or the governor to act?

Alabama Citizens for Constitutional Reform, a statewide group that grew out of a rally in Tuscaloosa in April 2000, responded to his challenge. It created a framework for the proposed commission and then raised money through its members and private donors to

support the work. ACCR's board appointed the independent commission, drawing on dozens of nominations from around the state.

The new commission held its organizational meeting on July 15 at Huntsville's Constitutional Village – the site of a convention that wrote Alabama's 1819 constitution. Several hundred citizens turned out to view the commission's proceedings; more than 40 spoke to the commission members on whether Alabama needed a new constitution. Most agreed that it did. Similar hearings occurred in Birmingham, Mobile and Auburn-Opelika. In each instance, the commission heard prepared reports from its technical advisers. Afterward, members of the public had their turn to speak.

Our recommendations can guide reform, whether it comes through a constitutional convention or through some legislative action. For example, Governor-elect Bob Riley proposes to appoint his own commission to carry this work forward and to make recommendations to the Legislature. We encourage the incoming governor, lieutenant governor and the entire legislature to study these findings and take-up the business of comprehensive constitutional reform.

More important than how reform actually occurs, is the success of any such effort. The overriding principle that informs our work is that reform should produce a modern, effective and just framework of fundamental laws to guide our state through the 21st Century. We believe that under such an enlightened Constitution, Alabama can create a civil society in which every citizen has an opportunity to pursue happiness and to make a useful contribution, while being assured that his or her rights are cherished and well protected.

It is in the loving spirit of this vision that we present our recommendations and pledge ourselves to complete the great task that Govs. Kilby and Brewer and so many other reform-minded Alabamians have held forth as the unfinished business for our state's democracy.

Respectfully submitted,

Jim Bennett, Chair, Montgomery
Sallie Creel, Vice-Chair, Birmingham

Donald Brown, Committee Chair, Local Democracy, Tuscaloosa
J. Gorman Houston, Committee Chair, Economic Development, Montgomery
Hartwell Lutz, Committee Chair, Governmental Organization, Gurley
Morris Savage, Committee Chair, Education, Jasper
Karen Stanley, Committee Co-Chair, Debt and Taxation, Huntsville

(Continued on next page)

Valerie Barnes, Dothan
Gary Burton, Pintlala
Lisa Christopher, Vestavia
Scott Douglas, Birmingham
Madeleine Hill, Tuscaloosa
Steve Holt, Florence
Robert Huffaker, Montgomery
Lynda Malone, Grove Hill
Jake Mathews, Anniston
John Nixon, Birmingham
Jerry Pow, Centreville
Alex Sierra, Arab
Eddie Thomas, Dothan
Julius Thrower, Mobile
Claudia Turner, Prattville

Alabama Citizens' Commission on Constitutional Reform

Recommendations

January 16, 2003

I. Local Democracy

The 1901 Constitution, whose original structure still governs Alabama, has no provision for home rule by local governments. Thus the simple issue is one of granting counties, cities and towns appropriate authority to decide local matters of governance, instead of leaving them to the Legislature. We believe that providing for greater democracy at the local level will lead to better government at home. Moreover, transferring decisions on local matters from the Legislature to local governments will leave the former more time to deal with matters of statewide importance and perhaps to perform more effectively.

In particular, the Constitution regards counties as extensions of the state relative to law enforcement, issuing licenses, recording documents, building and maintaining roads and bridges and assessing and collecting taxes. Indeed, counties' powers are so limited that they often must follow a cumbersome procedure through the Legislature, culminating in a statewide vote, to gain even the most basic local authority. We recommend that counties be free to make decisions autonomously and then submit them to voters when appropriate.

By contrast, towns and cities are much more independent. The Constitution classifies them by size (eight classifications) and empowers them to make a broad range of decisions, free from legislative approval. Counties and municipalities should have the same playing field to perform their duties, provided no decision they make is in conflict with existing general law.

We recommend that in drafting specific proposals for home rule, the framers of a new or revised document should use the Local Government section of the proposed 1973 Alabama Constitution as a reference. It presents a comprehensive but simplified approach to correcting the failures of the 1901 Constitution in this area.

Recommendations:

Counties:

1. Establish counties as corporate political bodies, following a model that Georgia now uses, with county officers elected to four-year terms. Counties should enjoy the power to adopt ordinances, resolutions or regulations pertaining to their local government. Those decisions would remain in effect unless amended or repealed as provided below.
2. Allow counties the option to construct their own charters of local government that define the powers of government, subject to approval by the local electorate. Counties that adopt local government charters would be allowed full legislative power as permitted

by their charters. Those that do not enact charters would choose a form of governance from optional plans of local government that the Legislature would design.

3. Shield localities with home rule charters from legislative oversight regarding their powers and functions; allow them to keep or repeal existing local acts, to abolish agencies those acts create, and to absorb special districts located within their boundaries. Consolidate, to the extent possible, local acts that apply to a single county.

4. Classify counties statutorily, by population, as cities are so classified in the Municipal Code of 1907.

5. Require counties, during the course of making major decisions, particularly if they involve large expenditures of public money, to hold a publicized public hearing, as is now required of municipalities.

6. Direct the Legislature to provide uniform procedures for all counties whereby boundaries may be changed with the consent of the people involved.

Municipalities:

1. Allow municipalities the governmental, corporate and proprietary powers to conduct their government, to perform municipal functions and services, and to exercise any power except as otherwise provided by general law.

2. Clarify existing general law to require the Legislature to provide optional plans of local government for municipalities.

3. Preserve the present eight classifications of cities.

4. Preserve Section 220 of the present Constitution, commonly known as the Franchise Law. This law requires municipal officials to approve, beforehand, the use of public property for public utility or private enterprise purposes.

5. Preserve the provision in Amendment 112 that permits the Legislature to authorize political subdivisions and public bodies to convey or consign parks, playgrounds, housing projects and similar types of property, if approved by the electorate.

Transition of authority:

1. Counties, county seats, municipalities, districts and townships should remain in effect until changed by general law or ordinance. Localities may keep existing powers and local acts except where repealed by either local referendum or general law.

2. Office holders, including those whose offices are abolished, should continue to the end of their term or until they are replaced, and receive current levels of compensation.

3. Local amendments to the present Constitution should remain in force for four years after the effective date of the new or revised Constitution, when they shall be repealed and deleted unless specifically continued by a local law enacted before that date. Such a local law may be enacted with or without a referendum as provided by law, or by an ordinance or resolution adopted by the local governing authority before the four-year anniversary of the new or revised Constitution.

4. Pre-existing debts and contracts of the state, counties and localities would continue under the new or revised Constitution, subject to time limits originally imposed on such debts and contracts.

Taxation:

Counties and municipalities should have the same local autonomy to make decisions over local taxation, subject to the local electorate's approval.

Conflicting Ordinances:

If a county ordinance and a municipal ordinance conflict, the municipal ordinance would prevail within the municipality, unless otherwise provided by a county charter or general law.

II. Debt and Taxation

Our commission views the fundamental question with respect to debt and taxation issues to be whether such provisions should be permanently imbedded within the 1901 Alabama Constitution or whether they should instead be codified by statute, leaving to the state Legislature and local governments the task of periodically reviewing each provision for legal efficacy and whether it continues to reflect sound tax or fiscal policy. Our preference is for the second approach.

During our deliberations, our technical experts pointed out that the 1901 Alabama Constitution has more amendments than any other state charter. The majority of those amendments relate to local tax issues. It is nonsensical, for example, to require that a tax referendum affecting only a single county be voted upon by the voters at large in this state. This amendment process is unnecessarily cumbersome and time consuming. In fact, Alabama's constitutional amendment process unreasonably obstructs both the Legislature and the local governments from addressing in a timely and efficient manner needed revenue sources.

Meanwhile, inclusion in the Constitution of limitations and restrictions upon the type and level of taxes that can be imposed has perpetrated an unduly regressive tax structure. The present Constitution only fosters this regressive tax structure as it caps revenue sources, such as income and property tax, and makes it inefficient and difficult to reform the tax structure in a more efficient and fair manner.

Alabama' s property tax revenues are by far the lowest per capita in the nation. Not surprisingly, Alabama collects the lowest revenues overall per capita. The constitutionally mandated low property taxes indirectly cause Alabama' s total tax burden to be shifted disproportionately and unfairly to the poorest Alabamians.

The Alabama Constitution stands in stark contrast with the U.S. Constitution, which provides no details or limitations concerning the federal income tax structure but instead delegates these powers to Congress. Rather than follow the model of the U.S. Constitution, which would delegate the authority over all tax matters to the Legislature or the local governing bodies, Alabama' s 1901 Constitution contains a thicket of tax provisions. For example, it caps the state' s income tax rate and mandates certain deductions. It also dictates the process for assessing the value of property and strictly limits property tax rates.

In terms of spending its tax dollars, Alabama earmarks more of its revenues (close to 90 percent), whether by Constitution or by statute, than any other state in the country. This practice removes any flexibility to reallocate tax revenues to meet financial needs. A new or revised Constitution must address this problem.

Limitations upon government indebtedness are important concerns for citizens of this state; yet restrictions upon debt created by state and local governments should not be so restrictive as to impair government spending. Although the 1901 Constitution contains restrictions on the incurring of public indebtedness, these restrictions have become effectively meaningless as a result of court decisions. Because of restrictions imbedded in the 1901 Constitution, the state and local governing bodies must go through the cumbersome constitutional amendment procedure or must secure permission from the courts to borrow on the full faith and credit of the state or local government. This unnecessarily complex procedure does not serve the best interests of our state.

Recommendations:

1. Any new or revised Constitution should delegate the taxing power to the appropriate legislative body and should not contain any details or limitations addressing the substantive tax provisions. With respect to tax provisions that affect all Alabamians, the Legislature should have the legal authority to enact substantive tax laws. With respect to local tax rates and levies, the local governing bodies should have power to enact tax measures.
2. When delegating the general authority to local governing bodies to impose taxes, the reformed Constitution should require that a majority of the voters affected at the local level approve the proposed local taxes. Alternatively, the Constitution could direct that the local governing bodies adopt reasonable administrative procedures, such as notice and public hearing, before imposing new tax measures.

3. The Constitution should contain a simple authorization for the Legislature to levy an income tax, perhaps combined with authorization to incorporate by reference provisions of the federal income tax. The rate and exemptions specified in Amendment 25 (maximum tax rate) and Amendment 225 (deduction for federal income tax paid) should be removed from the state's Constitution.
4. All details concerning the income tax structure, including, the power to set the income tax rates, the amount of exemptions taxpayers should enjoy at all income levels, and deductions allowed should be constitutionally delegated to the state Legislature.
5. Ceilings for ad valorem taxes should be removed from the Constitution. There should be a constitutional requirement, however, that any increases in ad valorem rates must be approved by voters of the county or other taxing authority in the case of local ad valorem taxes or by the Legislature in the case of state ad valorem taxes.
6. Classification of property for ad valorem purposes should continue, with the Legislature having the power to set assessment ratios in each class, provided that the ratios are applied on a uniform basis. Local taxing authorities should also be empowered to adjust assessment ratios, subject to approval by the voters provided ratios are applied uniformly.
7. The Lid Bill, contained in Amendment 373 (section i), should be retained in some form as a protection for taxpayers.
8. The Constitution should also delegate to the Legislature, in the case of state taxation, the power to define the portion of the property's value that is subject to the millage rates within a classification system. Likewise, local taxing authorities should have the power to adjust assessment ratios for local taxation, subject to their voters' approval.
9. A revised Constitution could include some reasonable form of current use limitation on ad valorem taxes. Such a limitation could include an acreage limitation upon the current use property or a longer recapture period than Alabama's present three-year provision.
10. Earmarking provisions should be removed from the Constitution. Or as an alternative, only those funds currently earmarked by constitutional provision should continue to be so designated. Otherwise, the Legislature should have the authority to determine whether revenue sources should be earmarked.
11. There should be a meaningful limitation on all debt issued by the state payable from public resources. Specifically, the Constitution should include a provision prohibiting debt to the extent aggregate debt service exceeds 10 percent of revenues available for the payment of debt service and limiting final maturities of debt issues to thirty years.
12. Provision should also be made to commission constitutional officers to oversee debt issuance. This procedure would involve a debt management program.

13. The framers of a revised Constitution also should consider the creation of a bond commission to manage the issuance of debt in Alabama.

14. The Constitution should not require a statewide vote for the issuance of general obligation debt. The distinction between general obligation debt and tax-backed debt should be eliminated. All debt authorized by the bond commission should be deemed general obligation debt of the state.

15. A general authorization for an estate tax should be substituted for the current Amendment 23.

III. Government Organization

The 1901 Alabama Constitution largely was a recapitulation of its 1875 predecessor. The 1901 framers sought to continue severe restrictions on government at all levels that an earlier generation had embraced in reaction to Reconstruction. As early as 1914, governors began complaining that the document had put a “straightjacket” on the executive and legislative branches, denying them the flexibility they needed to address adequately the myriad problems that arose in the new century. The judicial branch likewise suffered from poor organization and antiquated practices.

Since 1901, the Legislature has offered some piecemeal relief in the form of constitutional amendments. Some of these structural changes have been deemed successful. For example, most Alabamians probably agree that executive branch officers should be allowed to serve two consecutive terms in office and that the Legislature should meet in annual sessions. A notable exception, however, was the well-intentioned but ineffective “Budget Isolation Resolution” amendment of 1984. It actually impedes deliberation by forcing the legislative branch to consider budget matters first, unless 60 percent of the members present agree to consider another item. Such mixed results from tinkering with the legislative and executive branches underscores the need for comprehensive reform so that our state’s leaders may perform their duties in a manner consistent with citizens’ desire for effective, efficient and accountable government.

Meanwhile, reform of the judicial branch in 1973, under the leadership of then Alabama Chief Justice Howell Heflin, provides an excellent case study in successful structural change. The new Judicial Article that emerged from that process transformed Alabama’s sluggish and often ridiculed judicial branch into a model of organization. In fact, only one significant issue remains from that good work, and that is the question of whether Alabama should continue to elect its judges and if so whether elections should remain partisan or become non-partisan.

In making the recommendations below for changes in the present Constitution, our commission embraces the following principles:

Citizens are not well served when government cannot respond adequately or swiftly to their needs in the public sphere. The present arrangement of power in state government often works in favor of well-funded special interests who know how to manipulate the system and exploit its many weaknesses.

Citizens expect the governor to provide a check against unwise actions by the Legislature; yet the chief executive lacks the necessary powers to be an effective watchdog, especially on fiscal matters. Giving the governor greater power of the veto, for example, would help correct this imbalance.

Likewise, the office of lieutenant governor does not need to be independent of the governor. To the contrary, the two office-holders should operate smoothly as an executive team along the U.S. model of president and vice-president.

Appointment and confirmation of state agency heads need to follow a consistent and rational model – one that puts accountability for executive-level decisions and actions clearly with the state’s chief executive officer. The Constitution should give the Legislature authority to reorganize agencies as that elected body deems proper to eliminate duplication and confusion and to promote efficient delivery of services, protection of the environment, economic development and other purposes that are important to our citizens. Our commission considered the initiative and remains open-minded about this procedure but chooses not to embrace the idea in this report.

Recommendations:

Executive Branch:

1. Have the governor and lieutenant governor run as a team, much like the president and vice-president of the U.S.
2. Strengthen the governor’s veto powers, including the use of item vetoes in budget bills, and increase the vote of the Legislature necessary to override a veto.
3. Reduce constitutional specification of executive duties.
4. Make the auditor, secretary of state, treasurer, and commissioner of agriculture statutory rather than constitutional officers. Allow the Legislature through statute to change, merge or even abolish such offices.
5. Make sheriffs county officials, rather than members of the state executive branch.
6. Reduce the number of purpose-based state agencies and allow the governor to reorganize such agencies subject to the Legislature’s consent.
7. Provide the governor consistent authority to appoint and remove the heads of major agencies, subject to legislative consent.

8. Allow the governor more time to consider bills.

Legislative Branch:

1. Repeal Amendment 448 (Budget Isolation Resolution) and allow the Legislature to establish a more effective means for considering its budgets.
2. Reduce the number of calendar days allowed for an annual session but increase the number of legislative days, thereby making the Legislature more efficient in its use of members' time.
3. Strengthen and enhance open meetings and open records to include the public in legislative deliberations.
4. Establish a compensation system for legislators that fairly remunerates members for their time and eliminates the present subterfuges. Any increase in pay or expenses should be done through a roll call vote of the members. No increase may take effect until after the next election, thereby giving voters an opportunity to decide whether to return the incumbent at a higher salary.
5. Limit service of any legislator to three terms per chamber. This limitation would begin in force with a new or revised Constitution.
6. Provide for a reapportionment process that includes an appointed commission to do the job if the Legislature fails to complete the process within 60 days after the release of official Census Bureau data.
7. Remove the lieutenant governor as presiding officer of the Senate and assign that official mostly executive duties.
8. Allow the Legislature to call itself into special session through a petition signed by two-thirds of its members.
9. Establish a permanent constitutional reform commission that independently may submit amendments to the electorate every 10 years.
10. Review and modernize present constitutional provisions to prevent the Legislature from passing specific local legislation.

Judicial Branch:

1. The ideal system for selecting judges is one based upon merit, as determined by judicial commissions established for the purpose of selecting well-qualified jurists (the Missouri Plan).

2. Failing to secure such a system, Alabama's next choice should be to elect judges in non-partisan races, so that the merits of the individual judges figure larger in the decision of the electorate than partisan issues.

IV. Education

As study and analysis will quickly reveal, education in Alabama suffers from some deep-seated problems. Among them are (1) chronic lack of funding for schools; (2) lack of full accountability for funds received and the quality of instruction delivered; and (3) inadequate structure and organization. Accordingly, our commission concludes that the 1901 Constitution, beset by complexity and inordinate length, fails to address these issues adequately. Certainly, our commission recognizes that the majority of problems in education are matters of concern to be addressed by the Legislature and cannot be written into a constitutional document. A new Education Article, however, would be a major step toward the resolution and disposition of the state's education problems.

We embrace the observation of the U.S. Supreme Court that "education is perhaps the most important function of state and local government." While we recognize the inherent value of education and support the proposition that education is a fundamental value of the people of Alabama, and is a primary obligation of the state, and indeed a moral obligation of state government, we do not accept the proposition that education is or should be a constitutionally guaranteed right.

Accordingly, we recommend that a new Constitution should adopt much of the language, subject to some modifications, of the Education Article (Article X) included in the proposed Constitution of Alabama submitted by the Alabama Constitutional Commission on May 1, 1973.

Recommendations:

1. The Legislature shall provide for the maintenance and support of public schools and other educational institutions.
2. There should be an appointed State Board of Education and an appointed Superintendent.

State Board of Education

There shall be a State Board of Education which shall consist of one member from each congressional district in the state and three members at large, all of whom shall be appointed by the Governor and confirmed by the Senate. The Governor shall not be a member of the board. The terms of office of all members appointed after the effective date of this Constitution shall be for eight years. Members shall serve until their successors are appointed and qualified. In the event of a vacancy on the board by death, resignation, removal, or any reason other than expiration of a member's term, the

Governor shall fill such vacancy, and the person so appointed shall serve until confirmed by the Senate and, upon confirmation, shall serve for the unexpired term of office. Terms shall be staggered so that no more than three appointments to full terms shall be made in the same year.

General supervision of the public schools shall be vested in the State Board of Education that shall have such other powers and duties as provided by law.

The qualifications, compensation and removal from office of the members of the State Board of Education shall be provided by law.

State School Superintendent

There shall be a State Superintendent of Education, who shall be the executive officer of the State Board of Education, appointed by the board. The State Superintendent of Education shall have such other duties and qualifications and shall be paid such compensation as may be fixed by law. No member of the State Board of Education shall be eligible for selection as State Superintendent of Education during the time for which such member shall have been appointed.

Local School Systems

The Legislature may by local law provide for the creation, consolidation, selection, duties and compensation of boards of education within the counties or municipalities of the state. The Legislature may also by local law provide for the establishment of local superintendents of education, their manner of selection, duties and compensation. Any local law adopted pursuant to this provision shall not become effective until ratified by a vote of the electors of the county or municipality to which the local law applies.

3. The Constitution shall create a Board of Trustees for the University of Alabama.
4. The Constitution shall create a Board of Trustees of Auburn University. Our commission recommends the incorporation of Amendment No. 670, ratified in 2000. (Note: Statutory law determines the governance of other state universities, and our commission does not recommend any change in that approach.)
5. Members of Legislature shall be ineligible to serve on board of trustees or other governing bodies for the state's universities and colleges.
6. The Constitution should empower a Commission on Higher Education which would have the responsibility of advising the governor and the legislature on education beyond the secondary level.
7. Recognition of Mobile County's present exemptions and rights. Because of its unique historical experience, the county should continue to enjoy the authorizations and

exemptions provided under the present Constitution until otherwise provided by the Legislature.

V. Economic Development

The Constitution of Alabama of 1901 proscribes economic development activities by the State (Section 93 as amended by Amendment 58)¹ and by cities and counties (Section 94 as amended by Amendment 112).² The Supreme Court of Alabama has not been a model of consistency in interpreting and applying these constitutional provisions. Due to this inconsistency and a desire to authorize economic development efforts that might be prohibited by Section 94, the State has adopted 50 local constitutional amendments, which to varying degrees supersede Section 94 as applied to certain counties and/or municipalities.

Consequently, some Alabama municipalities and counties have more flexibility in offering valuable incentives to new industries than do others. Amendment 666 permits the state to fund its efforts to attract some new industries through the Alabama Capital Improvement Trust Fund. While Sections 93 and 94 prohibit or restrict many forms of economic development efforts by the state and certain municipalities and counties, Amendment 666 and the 50 local constitutional amendments assures that at least a portion of the state's resources and some municipalities' and counties' resources ~~can~~ be used for economic development. This unequal treatment concerns our commission.

Section 213 of the 1901 Alabama Constitution, as amended by Amendment 26, provides: "After the ratification of this Constitution, no new debt shall be created against, or incurred by the state or its authority ... [with certain exceptions not relevant to economic development]."

The Supreme Court has held that pledging revenues from a new source that has not previously been paid into the state's general fund does not ~~create~~ a debt of the state. By cumbersome arrangements, the state has pledged certain "in lieu of tax" payments made to the state to finance much of the incentive packages promised to major industries that

¹"The state shall not engage in works of internal improvement, nor lend money or its credit in aid as such, except as may be authorized by the Constitution of Alabama or amendments thereto; nor shall the state be interested in any private or corporate enterprise, or lend money or its credit to any individual, association, or corporation, except as may be expressly authorized by the Constitution of Alabama, or amendments thereto."

²"The legislature shall not have power to authorize any county, city, or town, or other subdivision of this state to lend its credit, or to grant public money or thing of value in aid of, or to any individual, association, or corporation whatsoever, or to become a stockholder in any such corporation, association, or company, by issuing bonds or otherwise."

have located plants in Alabama. This arrangement suffers not only from being cumbersome but also from lacking precedential authority when dealing with constitutional challenges. Thus, revenues available for appropriation to the Alabama Incentives Finance Authority (the instrumentality used to fund these incentive packages) are limited, as are the funds that can be raised for future economic development projects.

Other provisions of the Constitution affect economic development as well. For example, earmarking of state revenues for specific purposes and what many perceive as inadequate funding of public education can be traced to constitutional provisions. The commission addresses these matters elsewhere in this report.

We do wish to emphasize that committing public funds to a use that includes a direct benefit to a private industry or business should be tightly controlled and should require long and thoughtful deliberations. However, the reality of successful 21st Century industrial recruitment often requires the expenditure of public funds.

Alabama is a representative democracy; and those who are elected to represent all the citizens of Alabama are charged with the responsibilities not only of establishing justice, ensuring tranquility, providing for the common defense, and securing for present and future generations the rights of life, liberty, and property, but also of promoting the general welfare. There are times when the general welfare of this state can best be promoted by the use of economic incentives to attract industries or to encourage existing industries to expand their facilities and increase their workforces.

Alabama' s counties and municipalities are representative democracies; and those who are elected to represent the citizens of the counties and municipalities, within their geographical areas, have almost the same duties and responsibilities, as those who represent the state at large. Our officials elected to represent the state, counties, or municipalities are best equipped to make the decisions of whether state, county, or municipal funds, within their respective treasuries or to be borrowed, will best promote the general welfare of this state or of the particular counties or municipalities, and should be the ones to assure that the expenditure of public funds, which will benefit private industry or business, are tightly controlled and are committed only after long and thoughtful deliberations.

In addition to the election process by which unfaithful stewards of the public purse can be removed from office, Alabama now has laws in place to cast light on the deliberative process and to ferret out unethical and illegal conduct by our elected officials. Many of these laws were not in place when the 1901 Alabama Constitution was drafted and ratified.

Recommendations:

1. Section 93, as amended by Amendment 58, should be deleted. The legislative and executive branches of government should have the power, unfettered by the Alabama Constitution, to promote economic development.
2. Section 94, as amended by Amendment 112 (with the exceptions of useful provisions noted under Part I of this report), should be deleted from the Constitution of Alabama. County and municipal governments should have the power to promote economic development within their geographical areas, subject to general laws of the Legislature.
3. Upon the deletion of Section 93 and part of Section 94, as amended, framers of a new or revised Alabama Constitution also should delete Amendment 666 and the 50 local constitutional amendments authorizing the expenditure of public funds for industrial development. These amendments would be unnecessary to permit the expenditure of public funds for economic development.
4. Section 213 of the Constitution of Alabama of 1901, as amended by Amendment 26, should also be deleted. The Legislature of Alabama, along with county and municipal governments, should have the power to create new debt for economic expansion, subject to such reasonable safeguards and restrictions as they may decide to impose.
5. The Legislature should be allowed under a new or revised state Constitution to empower counties and cities to create debt to promote economic development within their geographical areas.

Appendix A

Members of the Alabama Citizens' Commission on Constitutional Reform.

1. Jim Bennett (chairman) is Alabama's secretary of state, a position he has held since 1993. He has just completed a term as president of the National Association of Secretaries of State. He spent 15 years in the Alabama Legislature, both as a member of the State House of Representatives and State Senate representing the Homewood area of Jefferson County.
2. Valerie Barnes is director of communications for the Dothan Area Chamber of Commerce. She also manages the community action partnership with the Community Foundation of Southeast Alabama. The group invests its members' endowments into community development. She has served on the boards of the Wiregrass United Way and the Education Foundation for Dothan's Future.
3. Donald Brown is a veteran print journalist and community volunteer in Tuscaloosa. His journalistic experience includes the editorship of two Alabama newspapers, the Florence TimesDaily and the Tuscaloosa News. He is past president of the Tuscaloosa Rotary Club and serves on the advisory boards of several civic organizations.
4. Gary Burton has been pastor of the Pintlala Baptist Church since 1972. A graduate of Samford University and the New Orleans Baptist Theological Seminary, he is actively engaged in community and state issues, especially in the area of social justice.
5. Lisa O'Connell Christopher is a civic activist in Vestavia Hills. She is a past president of the Chamber of Commerce and now serves as its foundation president. She is also a founding member of Vestavia Voters with Vision and is active with the Vestavia Hills PTA. She also works part-time as a public relations specialist.
6. Sallie C. Creel (vice-chairman) is a business owner and civic leader in Birmingham, who serves on many local boards. In 1997, the Birmingham News named her one of the area's 10 most influential women. She has won numerous other awards for her work in the community.
7. Scott Douglas is executive director of the Greater Birmingham Ministries, an interfaith and interracial group concerned with providing services and promoting social justice. He serves on the boards of the Birmingham Civil Rights Institute, Democracy South, the Alabama Poverty Project, and several other groups. He also is a trustee of the Birmingham-East District of the United Methodist Church.
8. Madeleine M. Hill supervises student field placements for the School of Social Work at the University of Alabama. She is active with the League of Women Voters and with many other local civic and educational organizations. She received the Rotary Rose for Community Service in 2002.

9. Steve Holt has been president of the Shoals Chamber of Commerce since 1994. He is the immediate past chairman of the Chamber of Commerce Association of Alabama. Prior to assuming his present position, he was active at the state level in chamber work in Tennessee and North Carolina.

10. Gorman Houston is associate justice of the Alabama Supreme Court. Prior to this service, he practiced law for 25 years in Eufaula, where he was citizen of the year in 1979. He is active in many civic groups and is a lay leader in the First United Methodist Church in Eufaula.

11. Robert A. Huffaker practices law in Montgomery. His primary areas involve trials and appeals of corporate and business litigation. He is general counsel to the Automobile Dealers Association of Alabama and the Alabama Road Builders Association. He is the longtime editor of the Alabama Lawyer, the official publication of the Alabama Bar Association.

12. Hartwell B. Lutz is a retired district court judge for Madison County, having been elected three times to that position. Prior to his judicial service, he served in the Alabama House of Representatives from 1970-78. The capital press corps named him the hardest-working House member in 1975-78. He is an ordained deacon and elder in the Presbyterian Church (USA).

13. Lynda Wright Malone is chair of the Clarke County Public Education School Board and a past president of the Alabama Education Association. Her educational career also included serving as dean of students for Alabama Southern Community College. She was named Grove Hill' s citizen of the year in 1987. Her present civic activities include serving on the board for Leadership Clarke County.

14. Jake Mathews is president of Calhoun-Cleburne County Bar Association. He also serves on the Board of Directors for the Calhoun County Habitat affiliate. He has had over 20 years of courtroom experience. He is active in his church and in his community.

15. John Nixon is a business executive in Birmingham. Earlier, he served as executive assistant to the president of the Alabama Public Service Commission. He is board chairman for the 6th Street Baptist Church. He is also board chairman of the Alabama School of Fine Arts. Other civic contributions include serving as vice-chairman of the A.G. Gaston Boys and Girls Clubs and on the board for City Stages.

16. Jerry Pow is probate judge of Bibb County. Prior to this position, he was mayor of Brent for six terms. He is a business owner and is active in the local Civitan Club and the Brent Volunteer Fire Department. He is a member of the Brent Baptist Church.

17. Morris Savage practices law in Jasper. He is a former president of the Walker County Bar Association, and a former two-term president of the Auburn National Alumni Association. He is active in local civic groups and is a trustee for the First United Methodist Church of Jasper. He served on the Auburn University Board of Trustees and now serves on the university's Foundation Board.

18. Alex Sierra owns and operates a restaurant in Arab. He is active in the Arab Chamber of Commerce. He also volunteers for several local organizations. He is a Spanish language translator for various local organizations, including the local court system, the fire department, the Red Cross and the Marshall County Hospital system.

19. Karen Stanley is an executive for her family's business in Huntsville. She is treasurer for the Board of the Girl Scouts of North Alabama, vice-chair for workforce development for the Huntsville/Madison County Chamber of Commerce, and chairman of the advisory board for the Alabama A&M School of business.

20. Eddie Thomas is a retired educator in Dothan. He is now pastor of the Mary Magdalene Baptist Church of Abbeville and the Mt. Sinai Baptist Church in Newville. He is active in many religious and fraternal organizations. He serves as moderator of the Abbeville District Baptist Association.

21. Julius Thrower is a retired educator and minister in Mobile. He is past vice president for the American Association of Veteran Administrators. He is an adjunct professor for funeral service education at Bishop State Community College.

22. Claudia Turner teaches government and economics at Prattville High School. She is also an adjunct faculty member for Auburn University Montgomery. She was Autauga County Secondary Teacher of the Year in 1998 and earned National Certification in 2001. She is active in promoting civic education at the state and national levels.

Volunteer Staff

Dr. Bailey Thomson, associate professor of journalism at the University of Alabama, served as education and communication assistant to the commission.

Prof. Howard Walthall of the Cumberland School of Law, Samford University, served as director of the technical advisers and general adviser to the commission.