

6. Greater transparency now exists in legislative actions including the budget, which has resulted in greater public and lobbyist access to information. (See *Appendix B, Budget Transparency.*)
7. Members now have more time to read and digest LFO reports on wording and monetary changes in legislation as the budget moves through the legislative process.
8. Legislative leaders recognize the need for "rainy day" accounts and restraints on spending in strong economic times in order to make funds available in poor economic times.

Several factors have been identified in interviews as the reasons for these changes. They include:

1. Members have called for greater input in budget formulation in committee and on the floor. Members wanted an end to last-minute budget arrivals and last-minute conference reports with little, if any, time to read the reports, identify changes and their impact, and debate the legislation.
2. Daily legislative operations are more organized than in the past, with the level of organization greater in the House than in the Senate.
3. The House has gained control of the Speaker's election from the Governor, and the Lt. Governor's powers have been weakened. Both have resulted in greater internal control over legislative operations including committee appointment powers.

House organizational and procedural changes (e.g., announced meeting dates and times, end-of-day target times, more web posting of information) initiated by the Speaker, have facilitated budgetary decision making in that chamber. The Speaker's inclusion of the three major House factions on

House committees also has helped the process. (See *The Committee System* and *Citizen Access* for related discussions.)

The major constraints on the budget process continue to be constitutionally mandated: earmarking of funds (approximately 90% of all monies), set rates and limits on the property tax and income tax, the regressive nature of the income tax, and the listing of specific deductions, and tax exemptions.

V. LOCAL LEGISLATION

Because Alabama's 1901 Constitution prohibits "home rule," the Alabama Legislature spends an estimated 40% of its time on legislative acts or constitutional amendments authorizing acts that local governments perform in other states. Already overwhelmed by state bills that they have inadequate time to study, legislators must decide, with no knowledge of local conditions, whether to permit a county to sell bonds for industrial development, provide small raises to local officials, or increase their taxes for better schools or public transportation.

This situation arises partly because the Alabama Constitution and laws place the state under Dillon's Rule. Judge Dillon, a late 19th century Iowa judge, called Local Governments "creatures of the state" that have only those powers expressly granted to them by state constitutions and statutes. This principle reverses the federal/state provision in the U.S. Constitution, which reserves all powers not specifically assigned to the federal government to the states or people. (Williams and Horn, pages 246-247. See the essay in *Selected References* for fuller explanations.)

Local legislation generally applies to particular places, like one county or city, as distinguished from general law that applies to the state as a whole. Because the Alabama Constitution specifically prohibits 31 kinds of local laws (Section 104) many local bills must be passed as constitutional amendments.

<p>Local Law</p> <p>Affects only one county or city that is specifically named.</p>
<p>General Law</p> <p>Affects the state as a whole or one or more municipalities named in a class or grouping defined by specific criteria (usually population size).</p>

In the past when the problems were fewer, “legislative courtesy” was practiced. The legislature passed without question whatever local bills and amendments senators and representatives introduced, so long as the proper local advertising was certified. Senate districts at that time did not cross county lines and several House districts were nested within one Senate district so that the local delegation covered one locality. Although conflicts arose between what county or city governments wanted and what legislators were willing to support, the local delegations were relatively cohesive and accessible to local citizens.

Redistricting after the 1990 and 2000 censuses greatly complicated the make-up and cohesiveness of local delegations. Even a medium-sized county can find itself with three senators and six representatives, with only three of the nine living in the county. Senatorial districts may include parts of six or seven counties. Consultation about local bills with county and city governments and with their constituents has become more difficult.

As the burden of local legislation increased, the legislature adopted various devices to manage it. First, it declared every local bill “a general bill of local application” in an effort to modify constitutional prohibitions on local bills. When this declaration was declared unconstitutional, amendments passed in 1978 and 1982 redefined a general law as one that applies either to the whole state or to one or more municipalities in a class. Eight classes were established on the basis of the 1970 census (Ala. Code 11-40-12). These classes

have never been revised. (Legislative Process, pages 50-54)

A potential threat to “tens of thousands” of local laws arose over the habit of legislators who did not vote on local bills in order to leave the decision to the local delegation. One judge ruled that the constitutional requirement, “a majority of each house,” means that a quorum must be present and a majority of the quorum must vote for the bill, instead of just a majority of members there to vote, no matter how few the members in attendance. If this ruling had been upheld, almost every local law would have been subject to court challenge. (Editorial and related news stories *Birmingham News*, March 25, 2005) Amendment 555 declared those earlier local laws valid.

The numerous local constitutional amendments, for which the 1901 Constitution required a statewide vote, were burdensome because of the added expense for elections, the confusion of a long ballot, and the problems inherent in asking all voters in the state to decide a local issue. Amendment 425 created the Local Constitutional Amendment Commission to certify that some local constitutional amendments do not require a statewide vote. This commission, the Callahan Commission, consists of the Governor, the Presiding Officer of the Senate, Attorney General, Secretary of State, and Speaker of the House. Unanimous approval by the commission was required for an amendment to be certified as local. Amendment 555 added the additional requirement that the passage of the bill by the House and Senate not only be approved by a 3/5 majority of the *elected members* of each house, but also receive no dissenting vote. The Commission’s vote no longer needs to be unanimous, but only a majority. Failing these two approvals, a local amendment must be approved by a statewide vote as well as by the locality affected. (*Legislative Process*, page 68, Amendments 425 and 555. See also Susan Hamill, page 445, footnote 21.) As result of these amendments, fewer local amendments now appear on statewide ballots. It is possible, however, that

an unfavorable statewide vote may prevent a locality from fulfilling its intentions. Challenges to local amendments have sometimes been used by members seeking leverage with another member for their own agendas, as legislators explained in interviews.

Although ballots contain fewer local constitutional amendments, problems remain. The degree of successful consultation between local governments and the legislative delegations varies widely. Local problems must wait for legislative sessions and are subject to the uncertainties of the legislative process. As Williams and Horn note, “there is little room for local governments to address pressing local needs....[T]hey may not take the initiative when confronted with new challenges or potential solutions to old problems.... [T]hey lack independence [i.e. immunity] from state interference in any aspect of their affairs.” (William and Horn, 2002-2003, page 247)

House Procedures

A local bill in the House is assigned to one of eight committees. Seven committees each include all the representatives from a single county: Jefferson, Mobile, Madison, Montgomery, Tuscaloosa, Shelby, or Lee. Bills for smaller delegations go to the Committee on Local Legislation, which contains one member from each Congressional District. A simple majority in any of these committees can send a bill to the floor. Several House Rules can expedite local legislation by allowing it to be considered on the day assigned, unlike other bills, and by allowing a local bill to pass out without a meeting, with the unanimous consent of all members whose districts are affected. (Rules 67 and 77)

Senate Procedures

Although the procedures in the Senate are more informal for small delegations, a major difference is that a county’s senators must unanimously support a local bill or it dies. There are only three committees for local legislation, and their jurisdictions are defined

by county population size. Local Legislation #2 (500,000 population and over) covers only Jefferson County and its local governments. Local Legislation #3 (300,000-500,000 population) currently covers only Mobile County. All other local bills go to Local Legislation #1. Even if local senators agree on a bill, Local Legislation Committee #1, chaired at present by the President Pro Tempore, can reject it, although in such a case it may be reconsidered.

Local bills on certain topics must receive more than local delegation approval. Both houses require that any gambling-related bill favorably reported from a Local Legislation committee must then be referred to the Committee on Tourist and Marketing for further action. (Senate Rule 50A/House Rule 39) Senate Rule 50B provides that an environmental bill, with fees and taxes, that affects more than one political subdivision, be assigned first to a Local Legislation committee. If reported favorably, it then must be referred to the appropriate standing committee and be treated as a general bill. (*Legislative Process*, pp. 50-54; Senate and House Rules)

Home Rule

Almost every senator and representative interviewed was asked for recommendations on how to change the way local legislation is handled in their bodies. No one could suggest improvements. Many commented that the public notices required before introducing a local bill are adequate. The substance of proposed local legislation must be published in local newspapers once a week for four consecutive weeks, and be posted for two consecutive weeks at five different places in the county.

Home rule, by which the legislature cedes to local governments the authority to make certain kinds of decisions without a vote in the legislature, was universally acknowledged as the only alternative to the present system. Some legislators strongly

supported home rule. Asked for an overview of the strength and weaknesses of the legislature at this time, many legislators cited lack of home rule as a hindrance to good functioning. Other legislators offered reasons for opposing it, chiefly a distrust of current county governments by the people and by legislators.

Various forms of home rule could be accomplished by Constitutional Reform (rewriting the Legislative Article), by Constitutional Amendment to the existing Legislative Article, or by a general bill in which the legislature grants certain powers to localities that choose to adopt them.

Several recent bills which have been introduced have recommended a cafeteria of home rule powers from which a county may select according its specific needs. Other bills introduced would limit home rule powers to a few areas such as trash, junkyards, and nuisances, a list negotiated by “stakeholders,” such as the Alabama Association of County Commissioners and ALFA. Taxing powers are usually prohibited, and sometimes land use planning. Most of the bills require a vote of the people in the locality to adopt the specified additional powers. Most also allow counties not yet ready for home rule to remain under the current system.

States vary widely in the degree of autonomy for municipalities and counties. They also vary in granting local powers by constitution or by statute and in the specificity of the powers listed. Scholars state, “Almost all Southern states grant localities considerably more autonomy than Alabama.” (Williams and Horn, 2002-2003, page 250. See “What other states are doing,” pages 250-257 and the essay for fuller explanation.)

VI. PARTIES AND CAUCUSES

Asked to list recent changes in the legislature that impact its ability to work for the good of the state, most legislators and informed

observers interviewed named the growth of parties and caucuses. The two party caucuses were established by a Joint Resolution in 1997-1998 (House Public Information office); however, many mark the election of Guy Hunt as Governor in 1993 as the beginning of increased party competitiveness in the legislature. The caucuses play a growing and important role; meetings are increasingly well attended. Although Alabama is still listed in scholarly studies as a legislature dominated by one party, all interviewees expect partisan competition to intensify and the caucuses to strengthen in the legislature. What is not yet clear is the form a more mature partisanship might take or the beneficial and harmful effects for the state.

The following account of current circumstances, collected from LWVAL interviews, is useful to follow future developments. At present party caucuses appear in House and Senate Rules in only two ways: a Majority and a Minority Leader must be designated, and these two leaders or their designees are declared members of every Standing Committee. Beyond that, caucuses write their own rules, although House and Senate Rules take precedence.

The party caucuses are funded through a set appropriation from the legislative budget in the General Fund to majority and minority party leaders in each house. The majority or organizing party receives more funding. The House appropriations for 2005-2006 were \$57,000 for the majority and \$28,000 for the minority. Each party caucus pays rent for its offices in the State House and pays for its staff and other office expenses. Some minority funds have paid for a staff member to research and write op-ed pieces on various issues that members can adapt to their districts and use. Caucuses are free to raise additional funds through fund-raisers, through contributions from the state parties, and from PACs. The Ethics Law and campaign finance laws govern their fundraising activities.