

HB109

By Representatives Newton (D) and Jackson

RFD Constitution and Elections

Rd 1 10-JAN-06

**SYNOPSIS:** The current state constitution was ratified in 1901 and requires submitting the question of whether to call a constitutional convention to revise the constitution to the qualified electors of the state.

This bill would call for an election to submit the question of whether to call a constitutional convention to the qualified electors of the state. If the majority vote in favor of holding a constitutional convention, it would provide for the election of delegates to the convention, provide for the holding of the convention, and would provide for an election to submit the proposed constitution, once prepared by the convention, to the voters for ratification.

A BILL  
TO BE ENTITLED  
AN ACT

To provide for an election on the issue of calling a constitutional convention to revise and amend the Constitution of Alabama of 1901; and in the event a majority of electors voting favor the convention, to provide for the election of delegates to the convention; to provide for the holding of the convention; and to provide for an election to ratify the proposed constitution.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The Legislature of Alabama declares and finds the following:

(1) That similar to the Legislature of 1900, this Legislature faces an opportunity to change a constitution that is grievously defective and antiquated in that it reflects the conditions, frustrations, and prejudices of a long past century that do not exist today, and similar to the Legislature of 1900, this Legislature desires to provide for an election on the issue of calling a constitutional convention to revise and amend the Constitution of Alabama of 1901.

(2) That constitutional revision efforts over the past century have been unsuccessful due to a lack of proper authority, i.e., the vote of the people of the State of Alabama.

(3) That Alabama's Constitution, as the state's living fundamental law, must closely reflect the values, vision, diversity, and deep faith of its people.

(4) That Alabama's Constitution is directly linked to the quality of life experienced daily by the state's citizens of all ages.

(5) That Alabama's Constitution must advance justice, compassion, stewardship, trust, reconciliation, and true democracy.

(6) That Alabama's current Constitution, as adopted in 1901 under obscure and archaic conditions which prohibited participation by large portions of Alabamians, including minorities, women, and youth, is thus today an unsound document which lacks legal integrity, moral force, and spiritual strength for the forward guidance of Alabama and her people in the 21st Century and beyond.

(7) That Alabama's 1901 Constitution, even as currently recompiled, is excessively amended, overly complex, historically petrified, inflexible, inadequate, inefficient, ineffective, the longest in the nation, and practically inaccessible to average citizens seeking a basic voice in their own government.

(8) That Alabama's 1901 Constitution now preserves and, tragically, encourages racial division and inequality; perpetuates deep economic injustices; shackles educational advancement and investment; handicaps the development, growth, work market, and public health and safety of local communities, especially in rural areas of the state; enshrines an inefficient, ineffective, and costly system of governance; and signals to international economic centers the continuing failure of the State of Alabama to acknowledge fundamental values of human and divine justice.

(9) That Alabama's 1901 Constitution, through its current ballot access barriers and its denial of community-based decision making, reflects today a profound and disturbing mistrust of the citizens of Alabama by over a century of previously elected officials who denied the people of Alabama the right to vote on the issue of a constitutional convention.

(10) That Alabama's voters are intelligent, insightful, wise, and spiritual, and thus, totally trustworthy to decide fundamental questions of current and future state policy and law, including and especially the character and content of their own Constitution.

(11) That Alabama's 1901 Constitution is today in urgent need of a fresh and open reexamination and revision in a sound public convention process to assure maximum public voices and broad participation, with respect to and with humility by all present state and local elected officials.

(12) That Alabama's new Constitution should provide a fundamental law by the people, for the people, and of the people of the great State of Alabama, with an enduring legacy of fundamental rights of liberty and justice for all, firmly developed by the people of the State of Alabama, invoking the favor and the guidance of Almighty God.

Section 2. A special statewide election shall be held November 7, 2006, on the same date and in the same manner and by the same officers as a general election required to be held on that date, for the purpose of determining whether a convention shall be held to revise and amend the Constitution of Alabama of 1901. At the election, the question of whether to hold a convention shall be submitted to a vote of the qualified electors of this state. There shall be printed on the official ballots, the question to be voted in the following form:

"Do you favor the holding of a constitutional convention for the purpose of revising the Constitution of Alabama of 1901?

"Yes ( ) No ( )"

If a majority of the voters voting at the election shall approve of the holding of a convention for the purpose stated, the election of the delegates for the convention and the holding of the convention shall be held in the manner hereinafter provided.

Section 3. In the same manner as for any other general election ballot, the election officials of each county

shall ascertain the number of votes "Yes" and the number of votes "No" and shall certify the vote results to the Secretary of State. The Secretary of State shall, as quickly as practicable, certify the statewide results. If it appears that a majority of all persons voting voted for the holding of the convention, the Governor shall give public notice, by proclamation, of the fact that a majority of the electors of the state voting at the election approved the call of the convention for the purpose of revising and amending the Constitution of Alabama of 1901. The proclamation shall be published in every county in a newspaper of general circulation. The courts of the state shall take judicial notice of the proclamation. Additionally, if the holding of the convention is approved by the qualified electors, a supplemental appropriation shall be made at the next regular session of the Legislature for funds necessary to implement this plan.

Section 4. If the holding of the convention is approved by the qualified electors of this state, the delegates elected in the manner hereinafter provided shall convene in the historic hall of the old chambers of the House of Representatives in the State Capitol building in the City of Montgomery at 12:00 noon on the first Tuesday following the second Monday in July 2007, and proceed to organize the convention by the election of a president from among themselves, and any other officers, who need not be delegates, as they may deem necessary. The most senior associate justice of the Alabama Supreme Court, or in his or her absence the second most senior associate justice shall call the convention to order and preside over the convention until a president is elected. The convention shall continue in session at times and places designated by the president of the convention until, by careful revision and amendment of the present constitution, it shall frame and adopt a revised constitution for this state but in no event shall the convention continue past May 1, 2008.

Section 5. (a) There shall be two delegates elected from each House of Representatives district as the districts exist at the time of the delegate election based on the most recent census for a total of 210 delegates. There shall be one male and one female delegate elected from each district. Delegates, who shall be elected without political affiliation, shall be elected at a special election that shall be held on the first Tuesday in April 2007, at the time and places prescribed by Chapter 7 of Title 17 of the Code of Alabama 1975, for the conduct and management of elections. If no candidate receives a majority of the votes cast in the election for delegates for which there were two or more candidates, a run-off election shall be held between the two candidates who received the most votes on the last Tuesday in April 2007.

(b) A delegate to the convention must be at least 21 years of age prior to the election, a qualified elector of his or her district, a citizen of the State of Alabama for three years, and a resident of his or her district for one year immediately preceding the election, and shall reside in his or her district while serving as a delegate.

(c) Candidates for election as delegates shall be qualified by filing a declaration of candidacy with the Secretary of State together with a qualifying fee of fifty dollars (\$50), which fee shall be deposited into the State Treasury to the credit of the Secretary of State to be used in the administration of this election. The date for qualification as determined by the Secretary of State shall be no less than 60 days prior to the first Tuesday in April 2007. All candidates for delegates shall be subject to the Fair Campaign Practices Act and any other laws governing candidates and elections at the time of the qualification and election; provided, however, that the following shall also apply:

(1) For purposes of the reporting requirements of the Fair Campaign Practices Act, an individual who has received contributions or made expenditures, or given his or her consent for any other person or persons to receive contributions on his or her behalf, in the amount of one thousand dollars (\$1,000) with a view to bringing about his or her election as a delegate shall be deemed a "candidate," even though that individual has not filed a declaration of candidacy with the Secretary of State.

(2) Other than contributions a candidate for delegate makes to his or her own campaign, a candidate is

prohibited from accepting a campaign contribution (including any "in-kind" contribution) exceeding one hundred dollars (\$100) from any one source. For the purpose of this limitation, a run-off election shall be considered a separate election in which a candidate may accept an additional amount not exceeding one hundred dollars (\$100) from any individual source.

(3) All contributions, of whatever amount, must be reported pursuant to the procedures prescribed by the Fair Campaign Practices Act.

(4) No candidate shall accept any contribution after the filing of the report required by Section 17-22A-8, Code of Alabama 1975, which shall be filed between five and 10 days before the election.

(5) Any postelection contribution is prohibited.

(6) Upon election, the delegates shall be subject to the Alabama Ethics Act and any other laws governing elected or appointed state officials.

(d) The judge of probate of each county shall prepare and furnish to the election officials of each voting place in the county a sufficient number of official ballots, prepared in the manner provided under existing laws, and containing the names of the persons who have been certified as candidates as provided in this act.

Section 6. If a dispute occurs as to the right of any person to sit in the convention as a delegate, the question shall be decided by the convention which shall be the exclusive judge of the election, qualification, and returns of its own members. Any person desiring to contest the election of a person certified as being elected as a delegate to the convention, may do so in the same manner as the election of a member of the House of Representatives of the Legislature of Alabama is contested and by giving the same bond. Testimony shall be taken in the same manner.

Section 7. Before entering upon the discharge of his or her duties as a member of the convention, each delegate, before a judge of a circuit court or the Supreme Court of Alabama, shall take the following oath: "I do solemnly swear that I will support the Constitution of the United States, and I will honestly and faithfully perform the duties as a delegate of this convention, so help me God."

Section 8. The delegates to the convention shall be supplied with stationery, books, statutes, reports, and documents in the same manner as members of the Legislature of Alabama. The delegates shall receive for their service the same per diem and mileage from the State Treasury as is allowed to members of the Legislature of Alabama. The expenses of the convention shall be paid in the same manner as provided for the members of the Legislature of Alabama. The per diem, mileage, and other expenses shall be paid on the certificates of the president and the secretary or clerk of the convention, to the State Comptroller, in the same manner that payment of the compensation to members of the Legislature of Alabama is by law directed to be made. Notwithstanding the foregoing, no legislative member who is a delegate shall receive additional legislative compensation or per diem if the legislative member is being paid any other payments on the same dates for attendance on other state business. Per diem, mileage, compensation, and other expenses shall not be allowed or paid to any member of the convention for a period of time longer than a maximum of 60 meeting days.

Section 9. For purposes of this act and the constitutional convention, the definition of "lobbying" in Section 36-25-1(17), Code of Alabama 1975, is adopted and also includes the practice of promoting, opposing, or in any manner attempting to influence the introduction, defeat, or enactment of any constitutional provision before the convention or any committee thereof. For purposes of this act and the constitutional convention, the term "lobbyist" as defined in Section 36-25-1(18), Code of Alabama 1975, is adopted and also includes anyone who performs activities included in the foregoing definition of "lobbying." Except to the extent this

act establishes more restrictive requirements, the Alabama Code of Ethics shall apply to lobbyists to the same extent it applies to lobbying the Legislature or a regulatory agency. Without limitation of the generality of the foregoing, all lobbyists shall be required to register with the State Ethics Commission as required by Section 36-25-18, Code of Alabama 1975, and to file the reports required by that section. Additionally, each lobbyist shall file with the State Ethics Commission on the first day and the fifteenth day of each month, beginning May 1, 2007, and continuing until the convention files its proposal or proposals with the Secretary of State, a report, made under oath, setting forth all expenditures made by him or her relative to lobbying activities. Furthermore, delegates shall be prohibited from receiving a thing of value in association with his or her duties as a delegate.

Section 10. The convention shall file with the Secretary of State, within one week after its adjournment, certified by the president and secretary or clerk, a correct copy of the constitution that the convention adopted. The convention shall keep a journal of its proceedings and file it upon adjournment with the Secretary of State.

Section 11. Except as herein otherwise provided, the general election laws of this state shall apply fully to the elections provided for under this act, including all matters preliminary to the holding of the elections as well as all matters subsequent thereto.

Section 12. (a) In the event of the framing of a constitution by this convention, the Governor, within one week after the filing of the constitution with the Secretary of State, shall issue a proclamation, published in the same manner as the proclamation to assemble this convention. The proclamation shall state that the constitution has been framed and that an election will be held on a specific date in the same manner and by the same officers as general elections are required to be held for the purpose of submitting to the qualified voters of this state for ratification or rejection of the constitution. The election shall be held at the same time and the same manner as the 2008 general election.

(b) At the election provided for by the preceding section, the question of whether to ratify the constitution proposed by the convention shall be submitted to a vote of the qualified electors of this state. There shall be printed on the official ballots, the question to be voted on followed by the words "Yes" and "No," opposite one of which the voter may indicate his or her preference. The returns of this election shall be made in the same manner, within the same time, by the same officers, certified to the same officer, and shall be in the same form as herein provided for the election regarding whether to hold a convention.

Section 13. Within 15 days after the day on which the election is held for the ratification or rejection of the constitution, the Governor, Secretary of State, and Attorney General shall meet in the office of the Secretary of State to tabulate the votes on the issue of ratification or rejection and the results shall be certified to the Governor by the Secretary of State and the Attorney General. The Governor shall make known to the people of this state, the results of the election by proclamation published in the manner herein provided. If a majority of the voters voting at the election voted affirmatively to ratify the constitution, the Governor shall designate within the proclamation that January 1 of the following year is the effective date the new constitution shall go into effect as the Constitution of the State of Alabama, and shall be binding and obligatory upon all the people of this state.

Section 14. If an election is called in the event of the framing of a constitution, the judge of probate of each county in the state shall prepare and furnish the official ballots to be voted at such election as is now required under the general election laws of the state which official ballot shall be prepared according to the requirements of Section 3 of this act. No ballot other than an official ballot shall be cast and counted in the election, and the election shall be held and conducted as general elections are held, except as otherwise provided by this act.

Section 15. This act shall become effective immediately upon its passage by the Legislature.

**Constitution of Alabama**

**Constitutional Convention**

**Constitutional Amendments**

**Elections**

**Legislature**