



# ANALYSIS

**Proposed Alabama  
Constitution of 2022  
and the Statewide  
Amendments**

*An Analysis of the Proposed Alabama Constitution of 2022  
and the Statewide Amendments*

Published by the Public Affairs Research Council of Alabama  
Birmingham, Alabama  
[www.parcAlabama.org](http://www.parcAlabama.org)  
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**Public Affairs  
Research Council  
of Alabama**

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## Introduction

Beyond the political contests on the November 8th ballot, Alabama voters will decide whether to adopt the Alabama Constitution of 2022, a recompiled version of the current constitution, as well as 10 statewide constitutional amendments. There will also be 19 other state constitutional amendments appearing on the ballots only in the county where those amendments apply.

Replacing the Alabama Constitution of 1901 has long been a goal of reformers. The current Constitution was adopted explicitly to guarantee White Supremacy in Alabama, by disenfranchising black and poor white voters, mandating segregated schools, and forbidding interracial marriage, among other provisions.

Such unconstitutional and repealed provisions will be gone from the Alabama Constitution of 2022. The constitution would also incorporate and reorganize the 978 amendments that have been made to the current constitution.

At the same time, the new constitution would preserve current law and practices that centralize power in the Legislature and require amendments to the state constitution for even mundane local matters. If the Alabama Constitution of 2022 is adopted, Alabama will still have the world's longest constitution: more than three times the length of the next closest state.

PARCA's new report, *An Analysis of the Proposed Alabama Constitution of 2022 and the Statewide Amendments*, details the proposal for the new constitution and the 10 amendments that will also be on ballots statewide.

As always, PARCA provides a high-level analysis of each statewide amendment. We study the ballot wording, but also the authorizing legislation behind the language. We do not make recommendations or endorsements, rather, we seek to understand the impact of the proposed changes and the rationales for them.

Voters can [find sample ballots on the Secretary of State's website, listed by county](#). The [ballot language for the statewide and local constitutional amendments](#) is also available on the site. Background material on [the proposed Constitution](#) can be found on the website of the Legislative Services Agency.

## A New Constitution?

*Proposing adoption of the Constitution of Alabama of 2022, which is a recompilation of the Constitution of Alabama of 1901, prepared in accordance with Amendment 951, arranging the Constitution in proper articles, parts, and sections, removing racist language, deleting duplicated and repealed provisions, consolidating provisions regarding economic development, arranging all local amendments by county of application, and making no other changes.*

Proposed by [Act 2021-523](#) (House Joint Resolution 211)  
Resolution Sponsors: Rep. Coleman and McCutcheon

Alabama will have its first new Constitution in over 120 years if voters approve the measure on the November ballot.

The new Constitution will be a significant and much-needed improvement over the racist and disorganized jumble that is the Constitution of 1901, the world's longest and most amended constitution.

But be clear: The Alabama Constitution of 2022 makes no change in policy or law. Like it or not, that was by design.

Amendment 951, which set the revision process in motion, specified that the new draft would:

1. Remove all racist language
2. Delete duplicative and repealed provisions
3. Consolidate provisions regarding economic development
4. Arrange all local amendments by county of application
5. And make no other changes

"Make no other changes" is meant to ensure that this is not a controversial vote. The legislature unanimously approved putting this recompiled Constitution before voters, assured that the new draft complied with the strict instructions.

However, that also means that the new Constitution will keep in place the unwieldy, premodern constraints of the 1901 Constitution, constraints that continue to shape Alabama state and local government by:

1. Imposing strict and prescriptive constitutional limits on government actions, taxes, and spending
2. Concentrating power in the Legislature
3. Requiring state constitutional changes to address local matters

Limiting home rule for local governments If approved, the Alabama Constitution of 2022 will look a lot better cosmetically. Ugly scars will be removed. Liposuction will eliminate repeated language and repealed provisions. The reshaped document will be more appealing to look at.

At the same time, the Alabama Constitution of 2022 will still be a gargantuan creature. It will lose the title of the most amended Constitution, as the revised version will incorporate all the existing amendments into the revised body. But it will still be by far the longest state Constitution in the U.S.

And it will still reflect a deep distrust of government and its role in society, interfering with the ability of state and local governments to provide adequate, efficient, and effective service.

Longtime advocates for constitutional reform, like Alabama Citizens for Constitutional Reform (ACCR), are advocating for the adoption, this being another step in a decades-long process of incrementally improving the Constitution. PARCA founder and former Governor Albert Brewer was among the founding members of ACCR, and Brewer continued to work for Constitutional Reform until his death.

But those same reformers recognize that harder work lies ahead to persuade Alabamians of the need for more substantive changes.

## **The New Constitution Would Be Shorter**

Alabama's Constitution of 1901 started growing almost immediately after it was adopted.

Its restraints on government action were so severe that its first amendment was needed in order for the government to carry out a basic function: building roads. Since that first amendment, it has grown into the world's longest and most amended constitution. There are currently 978 amendments to the Alabama Constitution.



The Alabama Constitution of 1901 is currently 420,000 words. The new Constitution will be somewhat shorter because redundant, repeated text will be deleted. Still, the new Constitution has a word count of 373,274 words across two volumes. That's still three times more words than the next-longest state Constitution.

## **The New Constitution Would Be Better Organized**

Currently, all 978 amendments are tacked to the end of the Constitution in the order in which they were passed. That's confusing.

Section 102 of the original Constitution forbids interracial marriage. It's not until you get to Amendment 667 do you find out voters repealed that provision (in the year 2000).

### **Statewide Amendments in Volume I**

The new Constitution will incorporate statewide amendments into the body of the Constitution in the relevant section.

Sections repealed by the amendment process, such as Section 102, will be deleted. Amendments pertaining to the various branches of government, those concerning suffrage and voting, economic development, and so on, will be incorporated under their appropriate article.

Volume 1 of the new Constitution, which includes only the sections that apply statewide, stretches over 100,000 words.

That includes a Declaration of Rights that includes the classic rights: life, liberty, and the pursuit of happiness, freedom of speech, press, and religion, and trial by jury.

But also incorporated into the Declaration of Rights would be the more recently adopted declarations, such as a state constitutional assertion that marriage is between a man and a woman, that governments have a right to display the Ten Commandments (in context), that citizens have a right refuse to buy health insurance, and that "unborn children" have the right to life.

Some of these recompiled amendments have been challenged in federal court and may or may not conflict with the U.S. Constitution. Regardless, they will be

incorporated into the new Constitution, as they are present in the current Constitution.

## **Local Amendments: Volume 2**

All the local amendments, more than 750 of them, will be collected in Volume II of the Constitution. Those amendments will be organized by the county in which they apply. And they will be ordered according to an organizational scheme.

Under each county, amendments about courts will be in Chapter 2, those about county government in Chapter 3, economic development in Chapter 4, and so on. Education, health, gaming, taxation, zoning, and amendments concerning municipalities in the county will all have their chapters.

If adopted, the second volume of Alabama's Constitution will contain 264,000 words, compared to the 100,000 words that comprise the constitutional provisions that apply statewide. So, 70% of the text of Alabama's new Constitution is a reorganized presentation of more than 750 local amendments adopted since 1901.

And the new Alabama Constitution will immediately grow again, as ten statewide and 19 local amendments are also on the ballot. If Amendment 10 is approved, the successful amendments will also be incorporated into the Constitution's appropriate volume and structure.

## **Remove Racist Language**

If ratified, the second improvement will be the removal of racist provisions in the Alabama Constitution. Alabama has slowly, and not always successfully, been removing racist provisions from the Constitution for decades now. However, there are still vestiges of the white supremacy that was so central to the 1901 Constitution.

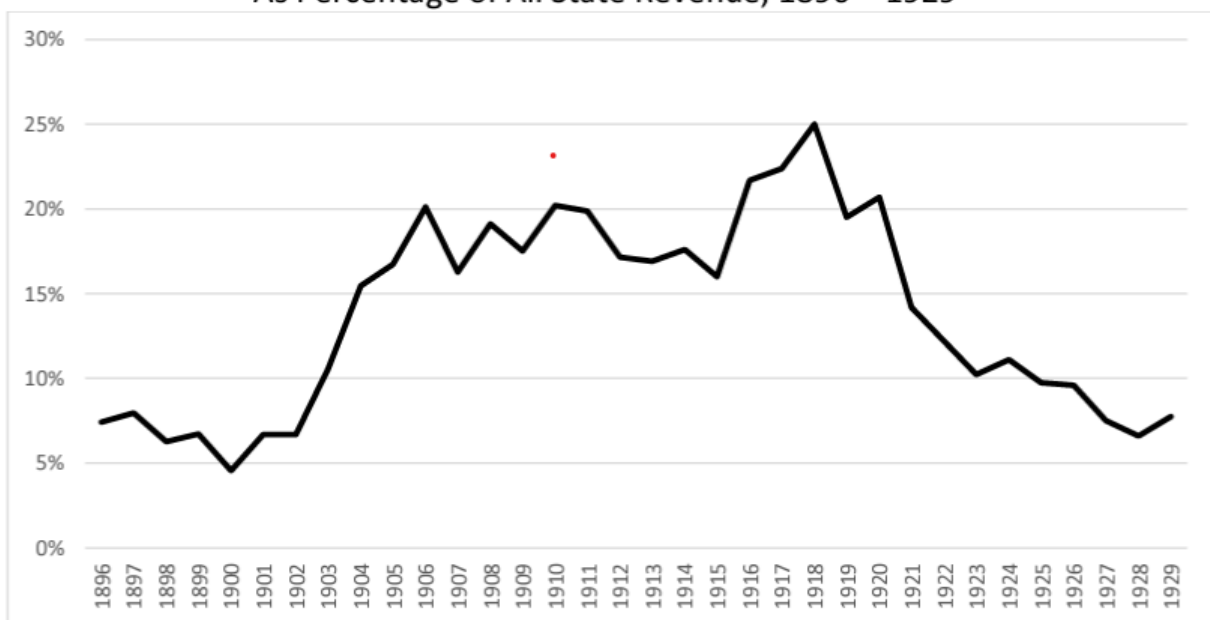
## **Involuntary Servitude**

Following the trend of other states, Alabama's new Constitution, if enacted, will edit the constitutional provision that forbids slavery, removing the clause that allowed involuntary servitude "for the punishment of crime, of which the party shall have been duly convicted."

This provision, which parallels the language of the Thirteenth Amendment to the U.S. Constitution, is now seen as having opened the door to the convict lease system.

In Alabama, individuals convicted of crimes were leased out to private operations, such as coal mines and timber camps, as cheap, non-union labor. They were often kept in inhumane and dangerous working and living conditions. The system supplied a sizable proportion of state revenue, from just over 5% of revenue in 1901 to 25% of revenue by 1918.<sup>1</sup>

**Chart 2: Convict Department Revenue Transfers to State Treasury  
As Percentage of All State Revenue, 1896 – 1929**



According to research by the Legislative Services Agency (LSA), 19 states have similar language in their constitutions. Three states have removed that language, and Tennessee voters will vote on a repeal in November.

Alabama's convict lease system was abolished in 1928, making Alabama the last state to end that practice.<sup>2</sup> According to LSA research, striking the phrase would have "no practical impact on our current incarceration practices nor punishment schemes."

<sup>1</sup> Alabama Convict Labor Revenue and Demographics, 1896–1929 Compiled by the Alabama Department of Archives & History for the Legislative Services Agency, October 2021

<sup>2</sup> "Convict-Lease System," Encyclopedia of Alabama, accessed October 10, 2022, <http://encyclopediaofalabama.org/article/h-1346>.

## Poll Taxes

Alabama's Constitution of 1901 imposed poll taxes as a way to limit voting rights. The 24<sup>th</sup> Amendment to the U.S. Constitution, ratified in 1964, outlawed poll taxes in federal elections, and in 1966, the U.S. Supreme Court extended that to state elections, ruling that the poll taxes violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.<sup>3</sup>

In 1996, Alabama voters replaced the suffrage and elections provision of the Alabama Constitution of 1901, which was full of unconstitutional and void provisions, including the poll tax.

However, there was one additional reference to poll taxes left in the Constitution, a provision earmarking the revenue from poll taxes to education. The new Constitution, if approved, will remove that reference.

## The Education Article

Alabama has twice tried and twice failed to remove racist provisions of the Alabama Constitution related to education.

The original 1901 Constitution said: "Separate schools shall be provided for white and colored children, and no child of either race shall be permitted to attend a school of the other race."

Then, after the U.S. Supreme Court *Brown v. Board of Education* Decision, Alabamians passed Amendment 111, which sought to preserve segregation by eliminating the 1901 Constitution's requirement that the Legislature "establish, organize, and maintain a liberal system of public schools throughout the state for the benefit of the children thereof." Instead, Amendment 111 stated explicitly that there was *not* a right to education at the public expense and that parents could choose to send children to schools "provided for their own race."

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<sup>3</sup> Brent Tarter, "Poll Tax," *Encyclopedia Virginia* (blog), accessed October 10, 2022, <https://encyclopediaivirginia.org/entries/poll-tax/>.

In 2002 and 2012, amendments that would have removed school segregation references failed. The 2002 attempt would have removed both the reference to racially separate schools and the assertion that there was no right to education.

That proposal sparked opposition from conservatives, who argued the proposed amendment would buttress the arguments of plaintiffs in a lawsuit that contended the state was failing to provide an equal and adequate education for Alabama children. If those plaintiffs prevailed, the opposition argued, Alabama could have been forced to raise taxes and provide more money to schools. That amendment failed.

In 2012, a revised proposal would have removed the mandate for racially segregated schools but left intact Amendment 111's assertion that there was no constitutional right to public education.

This time, Democratic lawmakers and the Alabama Education Association campaigned against the amendment. There was still a court battle over whether Alabama was constitutionally obligated to provide an equal and adequate education. The new opponents argued that ratifying an amendment that still contained that segregation-era language would weaken that case. That inspired enough opposition to sink the updated amendment.

The discrimination lawsuit was ultimately dismissed. The Alabama Constitution of 2022 will finally remove the reference to segregated schools but maintains the current language: "nothing in this Constitution shall be construed as creating or recognizing any right to education or training at public expense, nor as limiting the authority and duty of the legislature."

## **What the New Constitution Doesn't Change**

Since the Alabama Constitution of 2022 makes only editorial changes to the Constitution of 1901, the state will retain the essential characteristics established in that foundational document.

Unlike the U.S. Constitution, Alabama's Constitution, now and as proposed on the November ballot, is not a statement of broad principles, a basic framework, and a further delegation of power to local governments and the people. It reads more like a legal code, spelling out in detail what is allowed and what is prohibited.

It sets tax rates, earmarks revenue, routes local issues through the Legislature, and requires state constitutional amendments to address local matters.

## **Low Taxes Set in the Constitution**

Alabama's tax structure is largely set in the Constitution. Alabama's lowest-in-the-nation property tax revenues stem from constitutional provisions that make property taxes hard to raise and limited in their revenue production. That's thanks to caps on rates and a classification scheme that lowers taxes on homes, agriculture, and timberland.

The state income tax rate, established in the 1930s, and its brackets are also set in the Constitution instead of being adjustable by the Legislature. Over time, what had been established as a progressive income tax has become practically flat, and even low-income earners are subject to the tax.

Because the Constitution earmarks the income tax for teachers' salaries, it is deposited in an account separate from general revenue, the Education Trust Fund (ETF). The sales tax is also deposited in the ETF, requiring the passage of two separate budgets, one for education and one for the rest. Alabama is one of two states with two budgets, which creates problems when legislators need to shift money to meet priorities or changing circumstances.

The constitutional limits on local property taxes also force the state and localities to lean heavily on sales taxes. Consequently, Alabama's sales taxes are among the highest in the country. Taken together, the tax system built by the Constitution is regressive, falling most heavily on those least able to pay.

## **Local Matters Will Still Be Embedded in the State Constitution**

Oddly, 70% of Alabama's state Constitution is made up of amendments that apply to individual counties or cities. That won't change with the new Constitution.

Those more than 750 amendments might be better described as exceptions to the rule. And by now, there are so many exceptions it's hard to know what the rule is.

For instance, Alabama's Constitution has been interpreted to forbid games of chance, but 18 counties have local amendments authorizing bingo games with cash rewards. That has led to the rise of bingo casinos. For more than a decade, the courts have seen battles between state authorities and bingo operators fighting about what is legal where in Alabama.

Thanks to another amendment, most of these local amendments are now voted on only in the affected community, which begs the question: Why are they in the state Constitution? Two local amendments on this November's ballot would allow the operation of golf carts on municipal streets in Butler and Covington Counties. Three separate amendments would allow certain elected officials to participate in the state Employees' Retirement System.

If successful, these and similar future amendments will be incorporated into the supreme law of Alabama.

## Concentration of Power in the Legislature

Why are these questions in the state Constitution? Because the Constitution is designed to channel decision-making through the Alabama Legislature. That was the design from the beginning, as the most powerful interests in the state sought to keep control out of the hands of everyday citizens and local leaders.

[In a 2001 essay for \*Alabama Heritage\* magazine](#), former Gov. Albert Brewer went straight to the heart of the issue:

*The framers of the 1901 Constitution, however, had a basic distrust for government and deliberately denied local officials the authority to deal with local issues. This attitude is best illustrated by a comment made during the convention by a delegate from Tallapoosa County, who spoke in opposition to home rule: "No gentleman on this floor will contend that his [county commission] at home is more capable of legislating for the people of his county than the [Legislature], composed of one hundred select men."<sup>4</sup>*

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<sup>4</sup> "Why Alabama Needs a New Constitution," ALABAMA HERITAGE, accessed October 10, 2022, <http://www.alabamaheritage.com/8/post/2017/01/why-alabama-needs-a-new-constitution.html>.

Local governments in Alabama have only the powers delegated to them by the state Legislature. Cities were eventually granted home rule powers to tax and legislate, though they are still ultimately under the authority of the Legislature.

In general, counties can only perform the activities or exercise the authorities granted to them by the state Legislature or by amendments to the Constitution. Local tax rates are set by the Legislature or through the Constitution. Hundreds of local constitutional amendments and more than 35,000 local laws, all passed by the Legislature, mark the confusing terrain of county government in Alabama.

There has been modest progress toward entrusting local leaders and the voters with some authority. The Constitutional Revision Commission was able to negotiate, draft, and propose an amendment granting a limited expansion of administrative powers to counties, an amendment that passed in 2016.

Under Amendment 909, counties are now able, without legislative permission, to establish a personnel system, operate programs to fight litter and provide animal control, provide public transportation, and a handful of other activities. A separate amendment authorized counties to participate in economic development activities.

## **Conclusion**

The Alabama Constitution of 2022 would be a step forward, but the journey should continue.

A state that proclaims its belief in local control when facing off against the federal government should also trust its local communities to govern themselves.

Delegating local matters to local governments could help the state Legislature focus on state policy. Currently, local legislation accounts for about 40% of bills passed. A greater focus on state policy might lead the Legislature to devise a more balanced and equitable tax system and a more flexible and results-driven budgeting system.

That would take further amendments or a replacement for our cosmetically improved, but still dysfunctional, Constitution. But the only gateway to amendment or replacement rests with the Legislature, a three-fifths vote of the body required.



# Proposed Statewide Amendments to the Alabama Constitution

## Statewide Amendment 1

*Proposing an amendment to Section 16 of the Constitution of Alabama of 1901, now appearing as Section 16 of the Official Recompilation of the Constitution of Alabama 1901, as amended, to create Aniah's Law, to provide that an individual is entitled to reasonable bail prior to conviction, unless charged with an offense enumerated by the Legislature in general law capital murder, murder, kidnapping in the first degree, rape in the first degree, sodomy in the first degree, sexual torture, domestic violence in the first degree, human trafficking in the first degree, burglary in the first degree, arson in the first degree, robbery in the first degree, terrorism when the specified offense is a Class A felony other than murder, and aggravated child abuse of a child under the age of six.*

Proposed by [Act 2021-201](#) (House Bill 131, 2021 Regular Legislative Session)

Bill Sponsor: Representative Brown

Amendment 1 concerns the decision-making power of judges to deny bail to defendants accused of violent crimes. The amendment further expounds on current constitutional wording and expands legislation already in place to include provisions for judges' discretion to withhold bond in cases of certain Class A felonies.

Under current law, a defendant can be denied bail if accused of capital murder or for violating the provisions of bond. This amendment, popularly known as Aniah's Law, would allow the denial of bail for additional violent felony offenses, such as murder, first degree kidnapping, rape, and sodomy.

Section 16 of the 1901 Constitution of Alabama currently requires that "all persons shall, before conviction, beailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great; and that excessive bail shall not in any case be required."

The amendment would allow prosecutors to ask a judge for a hearing to request that bail be denied in cases where a defendant is charged with an enumerated list of violent Class A felonies. The judge would have the discretion to grant or deny the hearing. If granted a hearing, the district attorney would then have the opportunity

to present evidence that a defendant poses a danger to the community, presents a danger to self, or poses a flight risk.

The defendant would have the opportunity to testify, present witnesses, and cross-examine witnesses. The judge would then have the authority to withhold bail based on presented evidence.

The proposed modifications emanated from the case of Aniah Blanchard. In October 2019, Aniah Blanchard, a 19-year-old college student at Southern Union State Community College, was kidnapped at an Auburn, Alabama gas station and murdered. The suspect was out on bond at the time for charges of robbery, kidnapping, and attempted murder.

The legislation was introduced by Representative Chip Brown. The House of Representatives passed the legislation in February of 2021--104 to 0. The Senate added an amendment brought by Senator Vivian Figures, narrowing the felonies for which the change would apply.

The Senate passed the bill with a 30 to 0 vote in April 2021.

According to the [National Conference of State Legislatures](#), Alabama is currently one of 19 states with a broad constitutional right to bail except in capital murder cases.<sup>5</sup> Arkansas and Tennessee have similar constitutional provisions. Language in these provisions is generally traceable back language adopted by Pennsylvania in 1682.

Twenty-two states, including Florida, Mississippi, and South Carolina have amended versions that list other circumstances in which bail can be denied. Nine states including Georgia and North Carolina have no constitutional right to bail but instead have statutes that detail when bail can be denied.

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<sup>5</sup> <https://www.ncsl.org/research/civil-and-criminal-justice/pretrial-release-eligibility.aspx>

## Statewide Amendment 2

*Proposing an amendment to the Constitution of Alabama of 1901, to authorize the state, a county, or a municipality to grant federal award funds or any other source of funding designated for broadband infrastructure by state law to public or private entities for providing or expanding broadband infrastructure.*

Proposed by [Act No. 2022-117](#) (House Bill 255, 2022 Regular Legislative Session)  
Bill Sponsor: Representative Shedd

Amendment 2 seeks to clarify possible ambiguity in the Constitution. Section 10 of the 1901 Constitution prohibits a government from giving a “thing of value” to a private entity. Governments contract with private entities, but these are agreements wherein public funds, lands, or other assets are exchanged in return for goods or services—these are not gifts.

Presently both the U.S. and Alabama state governments are spending billions to expand broadband access, particularly to rural or otherwise underserved communities. ARPA provides an estimated \$2.1 billion to state government and \$950 million and \$790 million to counties and cities or towns, respectively. The Alabama Legislature has allocated \$277 million for broadband expansion as outlined by the *Alabama Connectivity Plan*.<sup>6</sup>

The FCC defined broadband internet as internet with 25/3 Mbps speeds or download speeds of 25 megabits per second and upload speeds of 3 megabits per second. Language in the ARPA legislation sets these thresholds at 100/20 Mbps. The *Alabama Connectivity Plan* suggests a goal of 90% of Alabamians with access to 100/20 Mbps broadband in five years and 98% within ten years.

Other states are using ARPA broadband funds to issue grants to internet service providers (ISPs) to build new or expand current networks to increase services to under-served communities. Such grants would be issued in response to Requests for Proposals issued by the funding governments. Unlike contracts, however, these new or expanded networks will remain under the ownership of the ISPs, which will continue operating these networks. Such a transfer may be prohibited in Alabama by Section 10.

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<sup>6</sup> <https://adeca.alabama.gov/wp-content/uploads/Alabama-Connectivity-Plan.pdf>

Amendment 2 stipulates that the state, county, city, or town may transfer state or federal funding to public or private entities to expand broadband access. A plain reading suggests that county or city funding may not be transferred. The amendment does not define broadband, but ARPA funding regulations state that the 100/20 Mbps thresholds are minimums.

## Statewide Amendment 3

*Proposing an amendment to the Constitution of Alabama of 1901, to require the Governor to provide notice to the Attorney General and to the victim's family prior to granting a reprieve or commutation to a person sentenced to death, and to void the reprieve or commutation if the Governor fails to provide notice.*

Proposed by [Act No. 2022-256](#) (Senate Bill 196, 2022 Regular Legislative Session)

Bill Sponsor: Senator Livingston

Cosponsor: Senator Givhan

The current language of Section 124 of Article V of the Alabama Constitution reads, "The governor shall have the power to grant reprieves and commutations to persons under sentence of death." Additionally, the Constitution states that the legislature has the authority to provide and regulate the administration of pardons, paroles, fines, and forfeitures.

A commutation is a reduction of a sentence (e.g., lessening a death sentence to life in prison), whereas a reprieve is a temporary suspension of a death sentence also referred to as "a stay of execution."

Amendment 3 proposes two noteworthy additions to the above language.

The Governor would be required to notify both the Attorney General *and* a designated family member of the victim prior to granting a commutation or a reprieve to a death sentence.

As it is currently written, the constitution does not require the governor to provide any notice of their decision regarding a death sentence. If Amendment 3 passes, the Attorney General will provide the governor with the designated family member's phone number, email address, and mailing address for the purpose of contacting them regarding a reduction or postponement to a death sentence.

Failure of the governor to provide notification to both parties will void the commutation or reprieve, and the Attorney General may seek a new execution order from the Alabama Supreme Court as provided under existing laws.

In addition to requiring the governor to notify the Attorney General and designated family member of their decision to grant a reprieve or commutation, Amendment 3 would make the governor's decision invalid if notice is not provided to the aforementioned parties.

To date, there are [166](#) inmates on death row in Alabama. The power to grant reductions or suspensions of death sentences in Alabama lies solely with the Governor. However, the Governor does not have the authority to grant a pardon or parole ([Alabama's Death Penalty Appeals Process](#)).

[According to the Alabama Capital Clemency Memo](#), Alabama has no set procedure for filing clemency (reduction of sentencing) petitions, nor is there a formal structure for judicial proceedings. Additionally, there is no timeline for a governor to decide on a commutation or reprieve for a death sentence other than it must be made by the set execution date.

It is worth noting that Alabama governors do not have a history of offering commutations to those on death row. Since the 1976 [U.S. Supreme Court ruling](#) that allowed the resumption of capital sentencing, only one person in Alabama has been commuted of a death sentence. Governor Kay Ivey has been in office for [11 executions](#) and has denied clemency in each case.

If passed, Amendment 3 will be the first change to Alabama death penalty laws since 2017 when Governor Ivey signed [Senate Bill 16](#) and [Senate Bill 187](#), the *Fair Justice Act*, into law.

## Statewide Amendment 4

*Proposing an amendment to the Constitution of Alabama of 1901, as amended; to provide that the implementation date for any bill enacted by the Legislature in a calendar year in which a general election is to be held and relating to the conduct of the general election shall be at least six months before the general election.*

Proposed by [Act 2021-284](#). (House Bill 388, 2021 Regular Legislative Session)

Bill Sponsor: Representatives Carns

Amendment 4 would prohibit the Legislature from changing election laws near the date of a general election.

The amendment says that any change in election law passed during a year with a general election must take effect at least six months before the election.

There are currently no constitutional provisions regarding deadlines for changes to election procedures or law.

The closest that exists are laws setting deadlines regarding placement of items on the ballot and or certification of candidates. However, those are just general laws and therefore could be over-ridden by the passage of an additional general law.

The idea of this constitutional amendment is to prohibit the legislature from passing a general law that would affect the operation of elections inside of the six-month time period.

If the majority of the voters vote "yes" on Amendment 4, any bill passed by the state legislature during an election year which affects how a general election is held must take effect at least six months before the general election.

If the majority of the voters vote "no" on Amendment 4, any bill passed by the state legislature which affects how the general election is held can take effect anytime before the general election.

## Statewide Amendments 5

*Proposing an amendment to the Constitution of Alabama of 1901, to delete a provision giving the probate court of each county general jurisdiction over orphans' business.*

Proposed by [Act No. 2021-202](#) (Senate Bill 68, 2021 Regular Legislative Session)  
Bill Sponsor: Senator Barfoot

Amendment 5 concerns probate courts. Most people are familiar with probate courts as the issuer of marriage licenses, recording deeds, and settling estates. Probate courts also have authority over adoptions, guardianships, and related matters. Like much in American law, probate courts have their roots in the English legal system.

These earliest probate courts were often called “Orphans’ Courts” as they often dealt with the affairs of children orphaned by the death of their parents. Some states continue to use similar language in their courts or state codes. Those interested in the history and evolution of probate courts can read an article from the Alabama Law Institute’s *Handbook for Alabama Probate Judges*, posted on the Houston County Probate Court website.<sup>7</sup>

Per the 1901 Constitution, the legislature has “the power to establish in each county a court of probate, with general jurisdiction of orphans’ business and with power to grant letters testamentary and of administration,” and such a court exists in each county. These probate courts also had jurisdiction over issue issues like custody, discipline, guardianship, and other matters relating to minors. When the Judicial Article of the Alabama Constitution was revised in 1973 by Amendment 328, our current unified judicial system was created. Amendment 328 specified that each county probate court “shall have jurisdiction as may be provided by law.” A 1975 act of the Legislature defined the powers of the probate courts.

The Constitution was further amended in 1977 to specify that probate courts.

“...shall have general jurisdiction of orphans’ business, and of adoptions, and with power to grant letters testamentary, and of administration, and of guardianships, and shall have such further jurisdiction as may be

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<sup>7</sup> [https://probate.houstoncountyal.gov/staff/128-probate\\_court\\_history](https://probate.houstoncountyal.gov/staff/128-probate_court_history)



provided by law, provided, that whenever the circuit court has taken jurisdiction of the settlement of any estate, it shall have power to do all things necessary for the settlement of such estate, including the appointment and removal of administrators, executors, guardians, and trustees and including action upon the resignation of either of them.”

Amendment 5 would delete the phrase “orphan’s business” from the Constitution. According to *Black’s Law Dictionary* (11th ed. 2019), the term refers to a probate court’s “jurisdiction over the allotment of distributive shares of an estate to the decedent’s family, especially the children.”

The Constitution and subsequent statute law already specify the execution of wills and distribution of assets are under probate courts’ jurisdiction. The phrase “orphan’s business” is both antiquated and redundant. Removing the words should not have affect probate courts’ jurisdiction nor expand the jurisdiction of family or other courts.

## Statewide Amendments 6

*Proposing an amendment to the Constitution of Alabama of 1901, as amended, each municipality authorized under [Amendment No. 8](#) to the Constitution of Alabama of 1901, now appearing Section 216.01 of the Recompiled Constitution of Alabama of 1901, as amended, to levy and collect the ad valorem tax pursuant to Amendment No. 8 for the purpose of paying bonds and the interest thereon, and may also levy and collect such ad valorem tax and utilize such funds for capital improvements on a pay-as-you-go basis at a rate not exceeding the rate then lawfully permitted for the municipality to directly pay the costs of public capital improvements, as well as to pay the principal and interest on bonds, warrants, or other securities issued to finance or refinance the costs of the improvements; and to ratify, validate, and confirm the levy and collection of such tax levied and collected for any of these purposes prior to the ratification of this amendment.*

Proposed by [Act 2021-327](#) (House Bill 178, 2021 Regular Legislative Session)

Bill Sponsor: Representative Ball

As stated, this amendment would permit cities to use ad valorem taxes to pay for capital improvements on a pay-as-you-go (PAYGO) basis as well as principal and interest on bonds, warrants, or other securities issued to pay for those improvements, including funds previously levied and collected to be used.

[PAYGO](#) is a widely accepted budgeting principle that can be used to avoid creating debt. In this instance, it would also allow cities to avoid the financing costs associated with issuing bonds.

However, this amendment does not extend this option to all cities, only those listed in [Amendment 8](#), which was approved by voters in 1916. [Amendment 8](#) provided authority, subject to voter approval, of no more than one and one-half percent for ad valorem taxes, currently permitted to be levied for debt for capital improvements.

[Amendment No. 8](#) extends this authority to these 41 municipalities, but not to others: Aliceville , Anniston, Ashland, Athens, Atmore, Auburn, Bessemer, Birmingham, Brewton, Camden, Carbon Hill, Carrollton, Columbiana, Demopolis, Fairfield, Fairhope, Flomaton, Florence, Girard, Gordo, Heflin, Huntsville, Hurtsboro, Inglenook, Jacksonville, Lafayette, Lanett, Livingston, Monroeville, Opelika, Pell City, Phoenix

City, Pine Hill, Pollard, Reform, Russellville, Scottsboro, Selma, Sheffield, Stevenson, Tuscumbia, and Tuskegee.

Of the 41 cities listed in [Amendment 8](#), 32 currently have populations of less than 20,000, some with little more than 100 residents. Two of them no longer exist after becoming part of another city, Girard in Phenix City, and Inglenook in Birmingham.

Overall, almost 1.2 million people in Alabama live in cities larger than 20,000 where this amendment would not be applicable. As proposed, the amendment would not provide this option for the cities of Alabaster, Albertville, Daphne, Decatur, Dothan, Enterprise, Foley, Gadsden, Helena, Homewood, Hoover, Madison, Mobile, Montgomery, Mountain Brook, Northport, Oxford, Pelham, Prattville, Trussville, Tuscaloosa, and Vestavia Hills.

## Statewide Amendments 7

*Proposing an amendment to revise [Amendment 772](#) to the Constitution of Alabama of 1901, as amended, to specify that all counties and municipalities may exercise the authority and powers granted by Amendment 772 to provide for economic and industrial development; to permit notice for Amendment 772 projects to be published in any newspaper in circulation in the county or municipality; and to ratify all actions and agreements of any county or municipality done under Amendment 772 unless subject to pending judicial proceedings on the date of adoption of this amendment.*

Proposed by [Act 2022-286](#) (House Bill 458, 2022 Regular Legislative Session)  
Bill Sponsor: Representative Sorrells

This amendment revises [Amendment 772](#), which allows all counties and municipalities to lend or grant public funds or things of value to an individual, public or private entity "for the purpose of promoting the economic and industrial development of the county or the municipality."

One of the key features of Amendment 772 is that it overrides [Section 93](#) stating, "The state shall not engage in works of internal improvement, nor lend money or 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."

It also overrides [Section 94](#), which prohibits "any county, city, 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."

Under Amendment 772, the county or municipality is required to adopt a declaration attesting to the economic or industrial benefits of such an action with the requirement that the information be published in the largest circulating newspaper in the county or municipality for at least seven days.

Proposed Amendment 7 would change the requirements, not requiring that publication be in the county's largest circulating newspaper, but any newspaper in the jurisdiction for at least seven days.

Also, under [Section 222](#) of the state constitution, issuing bonds to finance such actions would have to be approved by voters. Proposed Amendment 7 would eliminate ratification by voters, unless there is an additional tax, or the county or municipality is subject to a pending lawsuit.

The amendment makes no change to the provision in Amendment 772 that does not authorize a county commission to own or operate a cable television system.

## **Statewide Amendments 8 & 9**

### Amendment 8 Shelby County

*Relating to Shelby County, proposing an amendment to the Constitution of Alabama of 1901, to bring certain privately owned sewer systems that use public rights-of-way of public roads under the jurisdiction of the Public Service Commission under certain conditions.*

Proposed by [Act 2021-199](#)

Bill Sponsor: Senator Waggoner

### Amendment 9 Tuscaloosa and Jefferson County

*Relating to Jefferson County and Tuscaloosa County, proposing an amendment to the Constitution of Alabama of 1901, to bring certain privately owned sewer systems that use public rights-of-way of public roads in the city limits of Lake View under the jurisdiction of the Public Service Commission, beginning January 1, 2023 and ending December 31, 2027.*

Proposed by [Act 2022-288](#)

Bill Sponsor: Representative Wingo

Amendments 8 and 9 propose to bring two private wastewater treatment systems under the regulatory authority of the Alabama Public Service Authority. One is in north Shelby County, the other is in the town of Lake View on the border of Tuscaloosa and Jefferson counties.

Both systems, SouthWest Water in Shelby County and Tannehill Sewer in Lake View, have been the subject of long-running conflict with the residents they serve. In Shelby County the conflict has been over high rates. In Lake View, the conflict involves rate and operational problems.

If the amendments pass, the Public Service Commission will be able to regulate "rates, changes, and increases in rates or charges imposed on its customers."

The legislature, and in this case, the Constitution, can place wastewater facilities under the PSC's jurisdiction. Once under the jurisdiction, the PSC is empowered to examine the financial viability of the system, ensure that it is capable of operating and complying with environmental regulations, and determine whether the rates the entity charges customers are reasonable.

In the case of Lake View, the period of regulation is set in the amendment for 2023 through 2027. In the case of Shelby County, regulation can be ended if the entity negotiates with, and enters into, a rate agreement with a municipality, county, or public utility. The Public Service Commission would have to approve the agreement.

## Statewide Amendments 10

*Proposing an amendment to the Constitution of Alabama of 1901, to authorize the Code Commissioner, contingent upon the ratification of an official Constitution of Alabama of 2022, to renumber and place constitutional amendments ratified before or on the same day as the Constitution of Alabama of 2022, based on a logical sequence and the particular subject or topic of the amendment, and to provide for the transfer of existing annotations to any section of the Constitution of Alabama of 1901, to the section as it is numbered or renumbered in the Constitution of Alabama of 2022.*

Proposed by [Act No. 2022-177](#) (House Bill 319, 2022 Regular Legislative Session)  
Bill Sponsor: Representative Coleman

Amendment 10, if passed, allows the Code Commissioner to place any new amendments approved this November in the appropriate spot instead of tacking the amendments on at the end.

If the new Constitution is approved, it will theoretically be unamended.

However, as many as 10 statewide and 19 local Amendments could also pass on Nov. 8 as well.

Amendment 10 would give state officials the ability to place the amendments into the body of the Constitution, preserving the newly created organizational scheme. Amendments that apply statewide would go into Volume I and local amendments would go into Volume 2, filed under the county to which the amendment applies.



# Public Affairs Research Council of Alabama

## WHO WE ARE

The Public Affairs Research Council of Alabama is a nonpartisan research organization focused on helping state and community leaders make better-informed public policy decisions.

## WHAT WE BELIEVE

State and community leaders make better-informed decisions when provided with unbiased, nonpartisan data and resources about the topics they care about the most.

## HOW WE WORK

We conduct *nonpartisan research* on issues affecting the people of Alabama so state and community leaders, and others, can make better-informed decisions based on facts, not rhetoric.

We *independently evaluate* the efficacy of public programs and services.

We offer technical and research assistance for public and nonprofit partners to help them integrate the use of *accurate data* into their work.

We engage in *meaningful dialogue* with state and community leaders and others on the topics Alabamians care about the most.



## WHY WE MATTER

There are many groups and organizations vying for the attention of state and community leaders. It's often hard to identify what's real from alternative facts and partisan-leaning talking points. Our founders started the Public Affairs Research Council of Alabama more than three decades ago to counter the rising tide of misinformation. They recognized then, and it remains true today, that emotional appeals and fiery rhetoric often lead to indecision and false choices.

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205-726-2972



info@parcalabama.org



@PARCA.AL



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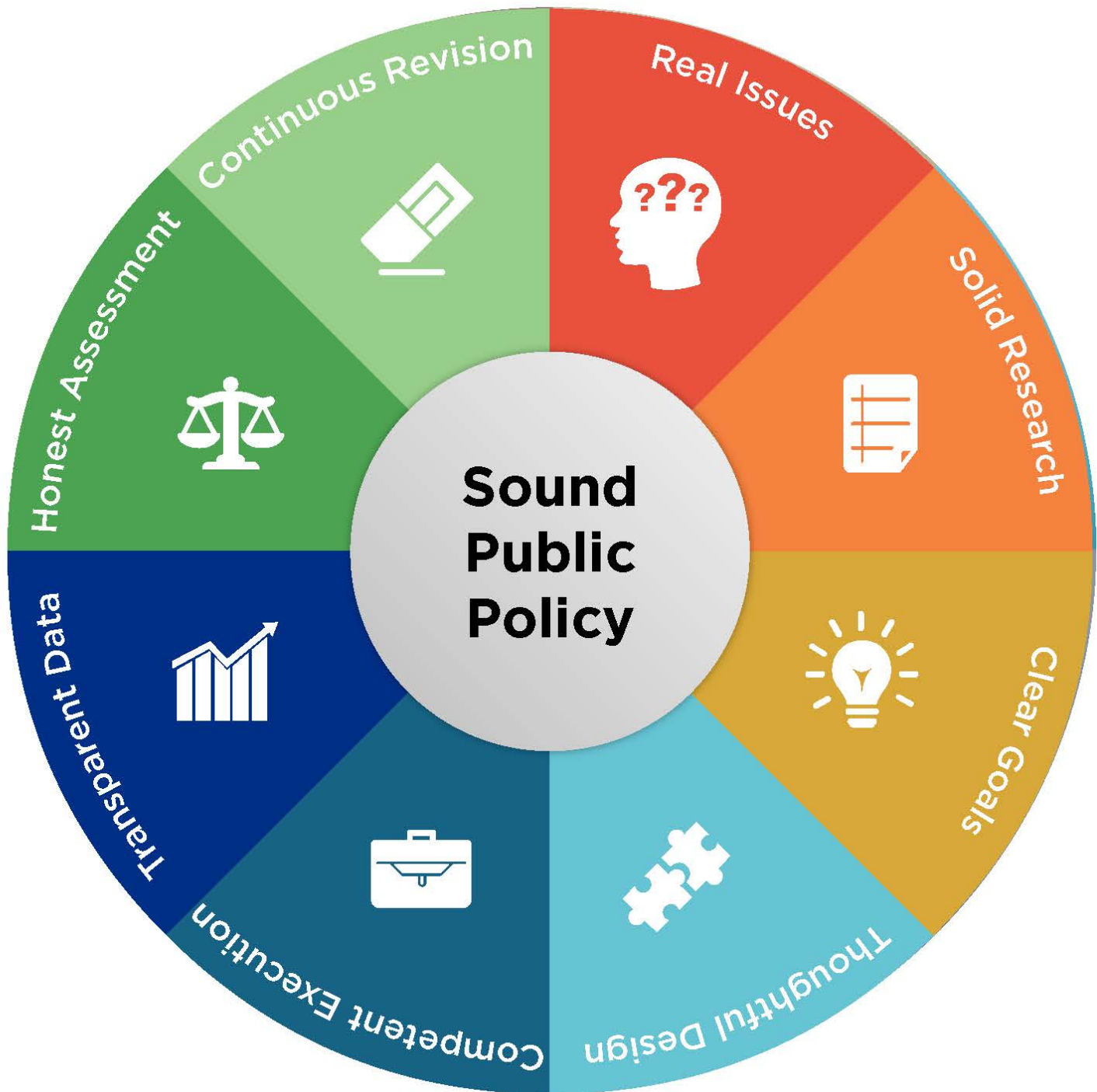


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**Public Affairs  
Research Council  
of Alabama**

P.O. BOX 293931  
800 LAKESHORE DRIVE  
BIRMINGHAM, ALABAMA 35229  
205-726-2482

[PARCALABAMA.ORG](http://PARCALABAMA.ORG)