

1 SB177  
2 116072-1  
3 By Senator Smitherman  
4 RFD: Constitution, Campaign Finance, Ethics, and Elections  
5 First Read: 12-JAN-10

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

13 This bill would call for a special statewide  
14 election to submit the question of whether to call  
15 a constitutional convention to the qualified  
16 electors of the state. If the majority voting on  
17 the question vote in favor of holding a  
18 constitutional convention, it would provide for the  
19 election of delegates to the convention, provide  
20 for the holding of the convention, and would  
21 provide for a special election to submit the  
22 proposed constitution, once prepared by the  
23 convention, to the voters for ratification in  
24 conformity with Amendment 714 of the Constitution  
25 of Alabama of 1901, now appearing as Section 286.01  
26 of the Official Recompilation of the Constitution  
27 of Alabama of 1901, as amended.

1  
2 A BILL  
3 TO BE ENTITLED  
4 AN ACT  
5

6 To provide for a special election on the issue of  
7 calling a constitutional convention to revise and amend the  
8 Constitution of Alabama of 1901; and in the event a majority  
9 of electors voting on the issue in the special election favor  
10 the convention, to provide for the election of delegates to  
11 the convention; to provide for the holding of the convention;  
12 and to provide for a special election to ratify the proposed  
13 constitution in conformity with Amendment 714 of the  
14 Constitution of Alabama of 1901, now appearing as Section  
15 286.01 of the Official Recompilation of the Constitution of  
16 Alabama 1901, as amended.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. A special statewide election shall be  
19 held in June 2010 on the same date and in the same manner and  
20 by the same officers as the political party primary election  
21 provided for in Section 17-13-3 of the Code of Alabama of  
22 1975, as such section has been or may be from time to time  
23 amended, for the purpose of determining whether a convention  
24 shall be held to revise and amend the Constitution of Alabama  
25 of 1901. At the election, the question of whether to hold a  
26 convention shall be submitted to a vote of the qualified

1 electors of this state. There shall be printed on the official  
2 ballots the question to be voted in the following form:

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

6 "Yes ( ) No ( )"

7 If a majority of the voters voting on the question  
8 at the special statewide election shall approve of the holding  
9 of a convention for the purpose stated, the election of the  
10 delegates for the convention and the holding of the convention  
11 shall be held in the manner hereinafter provided.

12 Section 2. In the same manner as for any other  
13 general election ballot, the election officials of each county  
14 shall ascertain the number of votes "Yes" and the number of  
15 votes "No" and shall certify the vote results to the Secretary  
16 of State. The Secretary of State, as quickly as practicable,  
17 shall certify the statewide results. If it appears that a  
18 majority of all persons voting on the question at the special  
19 election voted for the holding of the convention, the Governor  
20 shall give public notice, by proclamation, of the fact that a  
21 majority of the electors of the state voting on the question  
22 at the special election approved the call of the convention  
23 for the purpose of revising and amending the Constitution of  
24 Alabama of 1901. The proclamation shall be published in every  
25 county in a newspaper of general circulation. The courts of  
26 the state shall take judicial notice of the proclamation.  
27 Additionally, if the holding of the convention is approved by

1 the qualified electors, a supplemental appropriation shall be  
2 made during the next special or regular session of the  
3 Legislature for funds necessary to implement this plan.

4 Section 3. The Legislature of Alabama declares and  
5 finds the following:

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

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

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

22 Section 4. If the holding of the convention is  
23 approved by the qualified electors of this state, the  
24 delegates elected in the manner hereinafter provided shall  
25 convene in the historic hall of the old chambers of the House  
26 of Representatives in the State Capitol building in the City  
27 of Montgomery at 12:00 noon on the first Monday in June 2011,

1 and proceed to organize the convention by the election of a  
2 president and any other officers, from among themselves, as  
3 they may deem necessary. The most senior associate justice of  
4 the Alabama Supreme Court, or in his or her absence the second  
5 most senior associate justice, shall call the convention to  
6 order and preside over the convention until a president is  
7 elected. The convention shall continue in session at times and  
8 places designated by the president of the convention until, by  
9 careful revision and amendment of the present constitution, it  
10 shall frame and adopt a revised constitution or proposals for  
11 this state or until the convention is duly adjourned by the  
12 delegates.

13 Section 5. (a) There shall be two delegates elected  
14 from each House of Representatives district as the districts  
15 exist at the time of the delegate election based on the most  
16 recent census for a total of 210 delegates. Delegates, who  
17 shall be elected without political affiliation, at a special  
18 election that shall be held on the first Tuesday after the  
19 first Monday in November 2010, on the same date and in the  
20 same manner and held by the same officers as the general  
21 election provided for in Section 17-14-3 of the Code of  
22 Alabama of 1975, as such section has been or may be from time  
23 to time amended.

24 (b) A delegate to the convention shall be at least  
25 18 years of age prior to the election, a qualified elector of  
26 his or her district, a citizen of the State of Alabama for  
27 three years, and a resident of his or her district for one

1 year immediately preceding the election, and shall reside in  
2 his or her district while serving as a delegate.

3 (c) Candidates for election as delegates shall be  
4 qualified by filing a declaration of candidacy with the  
5 Secretary of State together with a qualifying fee of fifty  
6 dollars (\$50), which fee shall be deposited into the State  
7 Treasury to the credit of the Secretary of State to be used in  
8 the administration of this election. The date for  
9 qualification as determined by the Secretary of State shall be  
10 no later than 5:00 p.m., 60 days prior to the first Tuesday  
11 after the first Monday in November 2010. All candidates for  
12 delegates shall be subject to the Fair Campaign Practices Act  
13 and any other laws governing candidates and elections at the  
14 time of the qualification and election; provided, however,  
15 that the following shall also apply:

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

25 (2) Other than contributions a candidate for  
26 delegate makes to his or her own campaign, a candidate is  
27 prohibited from accepting a campaign contribution (including

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

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

10 (4) No candidate shall accept any contribution after  
11 the filing of the report required by Section 17-5-8, Code of  
12 Alabama 1975, which shall be filed between five and 10 days  
13 before the election.

14 (5) Any postelection contribution is prohibited.

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

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

24 Section 6. If a dispute occurs as to the right of  
25 any person to sit in the convention as a delegate, the  
26 question shall be decided by the convention which shall be the  
27 exclusive judge of the election, qualification, and returns of



1 its own members. Any person desiring to contest the election  
2 of a person certified as being elected as a delegate to the  
3 convention may do so in the same manner as the election of a  
4 member of the House of Representatives of the Legislature of  
5 Alabama is contested and by giving the same bond. Testimony  
6 shall be taken in the same manner.

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

14 Section 8. The delegates to the convention shall be  
15 supplied with stationery, books, statutes, reports, and  
16 documents in the same manner as members of the Legislature of  
17 Alabama. The delegates shall receive for their service the  
18 same compensation and expenses from the State Treasury as is  
19 allowed to members of the Legislature of Alabama and shall be  
20 entitled to a daily rate per diem equal to that rate paid to  
21 state employees for overnight per diem, plus mileage at the  
22 mileage rate provided for state employees. The expenses of the  
23 convention delegates shall be paid in the same manner as  
24 provided for members of the Legislature of Alabama. The  
25 compensation, per diem, mileage, and other expenses shall be  
26 paid on the certificates of the president and the secretary or  
27 clerk of the convention, to the state Comptroller, in the same

1 manner that payment of compensation, per diem, and mileage to  
2 members of the Legislature of Alabama is by law directed to be  
3 made. Notwithstanding the foregoing, no legislative member who  
4 is a delegate shall receive additional legislative  
5 compensation or per diem if the legislative member is being  
6 paid any other payments on the same dates for attendance on  
7 other state business. Per diem, mileage, compensation, and  
8 other expenses shall not be allowed or paid to any member of  
9 the convention for a period of time longer than a maximum of  
10 60 meeting days. Such compensation, per diem, mileage, and  
11 other expenses shall not be paid for any convention meeting  
12 days beyond September 30, 2011, whether or not the maximum 60  
13 convention meeting days have occurred.

14 Section 9. For purposes of this act and the  
15 constitutional convention, the definition of "lobbying" in  
16 Section 36-25-1(17), Code of Alabama 1975, is adopted and also  
17 includes the practice of promoting, opposing, or in any manner  
18 attempting to influence the introduction, defeat, or enactment  
19 of any constitutional provision before the convention or any  
20 committee thereof. For purposes of this act and the  
21 constitutional convention, the term "lobbyist" as defined in  
22 Section 36-25-1(18), Code of Alabama 1975, is adopted and also  
23 includes anyone who performs activities included in the  
24 foregoing definition of "lobbying." Except to the extent this  
25 act establishes more restrictive requirements, the Alabama  
26 Code of Ethics shall apply to lobbyists to the same extent it  
27 applies to lobbying the Legislature or a regulatory agency.

1 Without limitation of the generality of the foregoing, all  
2 lobbyists shall be required to register with the State Ethics  
3 Commission as required by Section 36-25-18, Code of Alabama  
4 1975, and to file the reports required by that section.  
5 Additionally, each lobbyist shall file with the State Ethics  
6 Commission on the first day and the fifteenth day of each  
7 month, beginning December 2010 and continuing each month  
8 thereafter until the convention is duly adjourned and any  
9 convention proposal or proposals filed with the Secretary of  
10 State have been presented to the voters for ratification in  
11 conformity with Amendment 714 of the Constitution of Alabama  
12 of 1901, now appearing as Section 286.01 of the Official  
13 Recompilation of the Constitution of Alabama of 1901, as  
14 amended, a report, made under oath, setting forth all  
15 expenditures made by him or her relative to lobbying  
16 activities. Furthermore, delegates shall be prohibited from  
17 receiving a thing of value in association with his or her  
18 duties as a delegate.

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

26 Section 11. Except as herein otherwise provided, the  
27 general election laws of this state shall apply fully to the

1 elections provided for under this act, including all matters  
2 preliminary to the holding of the elections as well as all  
3 matters subsequent thereto.

4 Section 12. (a) In the event of the framing of a  
5 constitution or proposals by this convention, the Governor,  
6 within one week after the filing of the constitution with the  
7 Secretary of State, shall issue a proclamation, published in  
8 the same manner as the proclamation to assemble this  
9 convention. The proclamation shall state that the constitution  
10 or proposals have been framed and that a special election will  
11 be held on a specific date in the same manner and by the same  
12 officers as general elections are required to be held for the  
13 purpose of submitting to the qualified voters of this state  
14 for ratification or rejection of the constitution or proposals  
15 framed by the convention. The special election, in conformity  
16 with Amendment 714 of the Constitution of Alabama of 1901, now  
17 appearing as Section 286.01 of the Official Recompilation of  
18 the Constitution of Alabama 1901, as amended, shall be held at  
19 the same time and the same manner as the 2012 general  
20 election.

21 (b) At the special election provided for by the  
22 preceding subsection, the question of whether to ratify the  
23 constitution or proposals adopted by the convention shall be  
24 submitted to a vote of the qualified electors of this state.  
25 There shall be printed on the official ballots the question to  
26 be voted on followed by the words "Yes" and "No," opposite one  
27 of which the voter may indicate his or her preference. The

1 returns of this election shall be made in the same manner,  
2 within the same time, by the same officers, certified to the  
3 same officer, and shall be in the same form as herein provided  
4 for the election regarding whether to hold a convention.

5 Section 13. Within 15 days after the day on which  
6 the election is held for the ratification or rejection of the  
7 constitution or proposals framed by the convention, the  
8 Governor, Secretary of State, and the Attorney General shall  
9 meet in the office of the Secretary of State to tabulate the  
10 votes on the issue of ratification or rejection and the  
11 results shall be certified to the Governor by the Secretary of  
12 State and the Attorney General. The Governor shall make known  
13 to the people of this state the results of the election by  
14 proclamation published in the manner herein provided. If a  
15 majority of the voters voting on the constitution or proposals  
16 framed by the convention at the special election provided for  
17 in Section 12(a) voted affirmatively to ratify the  
18 constitution or proposals, the Governor shall designate within  
19 the proclamation that January 1 of the following year is the  
20 effective date the new constitution shall go into effect as  
21 the Constitution of the State of Alabama, and shall be binding  
22 and obligatory upon all the people of this state.

23 Section 14. If a special election provided for in  
24 Section 12(a) is called in the event of the framing of a  
25 constitution or proposals by the convention, the judge of  
26 probate of each county in the state shall prepare and furnish  
27 the official ballots to be voted at such election as is now

1 required under the general election laws of the state which  
2 official ballot shall be prepared according to the  
3 requirements of Section 2. No ballot other than an official  
4 ballot shall be cast and counted in the election, and the  
5 election shall be held and conducted as general elections are  
6 held, except as otherwise provided by this act.

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