

**Joint Interim Legislative Committee on the
Recompilation of the Constitution**

September 2, 2021

A meeting of the Joint Interim Legislative Committee on the Recompilation of the Constitution was held in Room 200 of the Alabama State House on September 2, 2021.

The meeting was convened by Representative Merika Coleman, Chair, at 10:01 a.m. Mr. Othni Lathram, Director, Legislative Services Agency, took the attendance roll call. Committee members present for the meeting were Representative Merika Coleman, Chair, Representative Danny Garrett, Senator Sam Givhan, Representative Ben Robbins, Ms. Anita Archie, Mr. Greg Butrus, Mr. Stan Gregory, and Mr. Al Vance. Senator Arthur Orr, Vice Chair, attended the meeting virtually. Senator Rodger Smitherman was absent.

Representative Coleman stressed the importance of garnering public input and reminded members that the public comment period would continue until the close of business on Tuesday, September 7, 2021.

Mr. Lathram stated that comments from the public were being submitted and reminded members that all documentation and supporting material relating to the committee can be found on LSA's website at www.lsa.state.al.us, under the "News" tab.

Mr. Lathram proceeded to explain the handout prepared by Ms. Karen Smith, Senior Attorney, Legislative Services Agency, Legal Division, that created a prototype for organization of local constitutional amendments using the "common topic" method of organization. The document included all the local constitutional amendments for each county represented by a Legislative member of the committee. A discussion ensued, focusing on the treatment of municipal constitutional amendments and the nomenclature to be implemented in codifying local amendments. For purposes of the treatment of local municipal amendments where a particular municipality sits in more than one county, Mr. Lathram stated that his inclination was to codify the municipal amendment in each applicable county. Mr. Lathram stated that his goal is to have LSA complete a mock-up of all 67 counties prior to the next committee meeting and circulate the draft to the League of Municipalities and local officials for review and input.

Ms. Smith then reviewed the three approaches that the committee considered during the last committee meeting, namely, using the current system as it is organized in the Recompilation of the Constitution of Alabama 1901; using the chronological method, which would categorize local amendments based strictly on the order of enactment, organized by county; or using the common topic method, which designates ahead of time a number of topics and places each amendment under the most appropriate designated topic. The third option was determined by the committee during the previous committee meeting to be the best method to organize local amendments. A motion was duly made and seconded to formally adopt the common topic method for organizing local amendments.

Next, Mr. Lathram turned to the topic of removing racist language from the constitution. He reviewed a memorandum he had prepared, setting forth three sections of the constitution that contain racially discriminatory language on their face or were historically applied in a racially discriminatory manner. After giving an overview of the three laws and their historical context, each section was discussed separately.

Section 32 of the Constitution of Alabama of 1901 prohibits slavery and involuntary servitude, other than for punishment for a crime of which the person was duly convicted. Mr. Lathram examined the history of how this language was used during the time of Reconstruction and summarized how other state constitutions address this issue. He suggested that the last phrase of Section 32 be removed (*i.e.*, delete “otherwise than for the punishment of crime, of which the party shall have been duly convicted”). In his opinion, this would have no practical impact on the existing criminal justice system. A discussion followed. Before the next meeting of the committee, LSA staff will provide a list of states that have a constitutional provision authorizing involuntary servitude for prison labor, as well as a memo discussing the body of law currently used to govern the constitutionality of prison labor.

Section 259 of the Constitution of Alabama of 1901 requires the proceeds of poll taxes to be used to support the public schools in the respective counties where collected. Mr. Lathram pointed out that the constitutional amendments that authorized the collection of poll taxes were all repealed by Amendment 579 in 1996. The repealed language was contained in the Suffrage Article of the constitution, whereas Section 259 was not contained in that article. Section 259, which provides for how poll tax proceeds should be spent, remains in the constitution, despite the fact that the underlying structure authorizing poll taxes no longer exists. Mr. Lathram suggested this section be removed altogether. A discussion followed. LSA staff will research whether poll taxes are being levied in any state.

Section 256 of the Constitution of Alabama of 1901, as amended by Amendment 111, establishes educational policy in the state. Mr. Lathram reviewed the history of this section, including several unsuccessful attempts made over the years to amend it. Mr. Lathram suggested the last sentence, which permits the Legislature to authorize “the parents or guardians of minors, who desire that such minors [attend] schools provided for their own race, to make election to that end...” be removed. He also suggested that the last clause of the first sentence, which reads “to require or impose conditions or procedures deemed necessary to the preservation of peace and order” also be removed. Mr. Lathram explained the historical context of this language, which was proposed and ratified in 1956, two years after the landmark case of Brown v. Board of Education, during a time of social upheaval in the state. Again, a discussion ensued.

Members of the committee stressed that it is important that the committee stay within the scope of its mission, which is to remove racist language, not to rewrite the text or to remove obsolete language. The committee determined that no action would be taken at this time on these amendments, as the public comment period remains open through September 7, 2021.

Mr. Lathram suggested formation of an ad-hoc subcommittee to focus on economic development language in the constitution and bring its suggestions to the full committee at a future meeting. Members of the ad-hoc subcommittee on economic development provisions

include: Stan Gregory, Greg Butrus, and Senator Sam Givhan. In the meantime, LSA will provide documentation and proposed language that can be used as a starting point for subcommittee discussions.

Mr. Lathram reiterated to members that as public comments arrive, they will be disseminated to committee members and the LSA website. All personally identifiable information will be removed prior to posting. In addition, all research materials and documentation prepared by LSA will be distributed to committee members as it becomes available and also posted on LSA's website.

The next meeting will be held Wednesday, October 13, at 10:00 a.m. in Room 200 of the Alabama State House.

There being no additional business before the committee, the meeting was adjourned at 11:43 a.m.