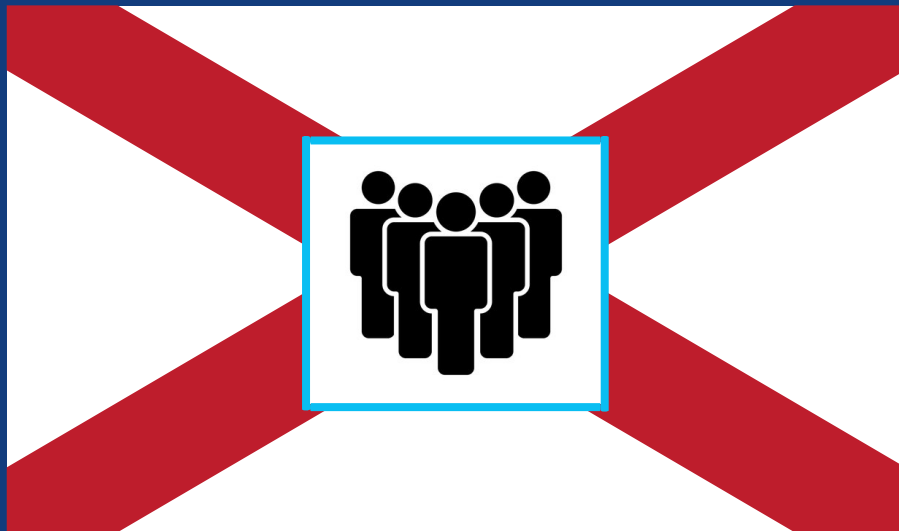


The Government Closest to the People?

THE STATEHOUSE, THE COURTHOUSE
AND CITY HALL



Public Affairs
Research Council
of Alabama

*The Government Closest to the People?
The Statehouse, the Courthouse, and City Hall*

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Introduction

Alabama voters adopted a revised and reorganized Constitution in 2022.

However, the “new” Constitution preserved the fundamental attitudes and mechanics of the previous Constitution.

Adopted in 1901, that constitution was designed for an agrarian state, strictly limiting government power to tax land. It forbade the state from engaging in “internal improvements” and disenfranchised blacks and poor whites. Some of those provisions were loosened through amendments over time. Others were found unconstitutional and struck down by the federal courts.

But one of the essential elements remains its concentration of power in the state government, the Legislature in particular.

Local governments were granted only the powers the Legislature or the Constitution explicitly permitted.

The ruling elite of the time looked with disdain at local government officials. Thomas L. Bulger of Dadeville, a delegate to the Constitutional Convention of 1901, expressed the prevailing attitude during the constitutional debates:

“No gentleman on this floor will contend that his Commissioners’ Court at home is more capable of legislating for the people of his county than the General Assembly, composed of 100 select men,” Bulger said.

And thus, to this day, a sizeable portion of the state Legislature’s business pertains to matters that are specific to particular counties or cities, not the state itself.

More than 35,000 local laws govern everything from local taxes to whether a sheriff’s deputy can keep his gun and badge upon retirement. Over time, in a confusing and convoluted process, the Constitution was amended over 1,000 times to meet the needs of modern life, swelling the document into the longest state constitution in the nation. It is believed to be the world’s longest constitution, and even with the 2022 reorganization, it will continue to grow.

The bulk of the state’s fundamental law is now made up of exceptions and exemptions to the general framework and principles a constitution is supposed to enumerate. Two-thirds of Alabama’s constitutional amendments apply to individual cities and counties. In effect, every county has its own version of the Constitution. And counties and cities still must ask the Legislature for the tools they need to manage basic affairs.

In many ways, though, the lack of home rule in Alabama reflects how Alabamians feel about government. They want limited government. They want limits on taxation. They do not trust governments to carry out their wishes. And they want to be left alone.

That is, until they demand that government step in and solve a problem. And, often, that requires a trip to Montgomery.

The balance of power and responsibility between state and local officials is an eternal struggle.

In the 1901 debates, Bulger was answered by John A. Rogers of Gainesville in Sumter County, who asked:

“Why is it that these people can select such fine representatives to the Legislature, and yet it is feared that they won’t be able to select satisfactory County Boards to handle these matters?”

Perhaps in the 21st century, it is time to revisit Roger’s thoughts and consider whether the same voters who elect Alabama legislators to enact state policy can be trusted to vote for local officials from their own communities who will reflect citizen wishes on local matters.

Local Governments Are Subservient to the State Government

Alabama operates under a legal concept known as Dillon's Rule: Local governments can only do what the state legislature empowers them to do.

This conceptualization of local power was developed in 1868 by an Iowa Supreme Court Justice, John F. Dillon.

*"Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control."*¹

Other states have adopted modernized constitutions that give local governing bodies broad powers to enact ordinances that protect their communities' life, health, and safety.

In a recently published volume on the Alabama Constitution, *Never Gonna Change: An Examination of the 1901 Alabama Constitution*, the authors contrast South Carolina and Georgia's constitutional reform efforts with Alabama's.² Both states adopted greater home rule authority in reform movements in the 1970s and 1980s.

Georgia's 1983 constitution, for example, delegates home rule authority to local governments:

*Paragraph I. **Home rule for counties.** (a) The governing authority of each county shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which is not inconsistent with this Constitution or any local law applicable thereto.*

¹ Mitchell Surface, "Dillon's Rule and Home Rule: The History Behind the Two Prevailing Views on the Powers of Local Government and What That Looks Like in Alabama," *American Journal of Trial Advocacy* (blog), August 11, 2020, <https://cumberlandtrialjournal.com/2020/08/11/dillons-rule-and-home-rule-the-history-behind-the-two-prevailing-views-on-the-powers-of-local-government-and-what-that-looks-like-in-alabama/>.

² N. Alexander Aguado, *Never Gonna Change?* (North Alabama Digital Press @ Collier Library, 2024), <https://una.pressbooks.pub/nevergonnachange/>.

Paragraph II. Home rule for municipalities. The General Assembly may provide by law for the self-government of municipalities and to that end is expressly given the authority to delegate its power so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly.

The Arkansas and Florida constitutions give all counties legislative power without limit so long as the state legislature does not explicitly deny those actions and ordinances. The Arkansas and South Carolina Constitutions prohibit the legislature from enacting local acts.

In Louisiana, voters can authorize a local government to manage its own affairs. Tennessee gives counties broad legislative authority and the option of adopting home rule charters.

Alabama could have chosen a different approach than the one it did in 1901. The Committee on Local Legislation to the Constitutional Convention of 1901 considered, but ultimately failed to adopt, the following proposed language:

“The General assembly may by general law confer upon courts of County Commissioners, Boards of Revenue or other courts, such power of local legislation and administration, touching all matters and things not provided for by general law, and not inconsistent with the provisions of this Constitution as the General Assembly may from time to time deem expedient.”

Alabama’s constitutional system is still rooted in attitudes toward government shaped in response to the post-Civil War period of Reconstruction. Under Reconstruction, with Republicans in charge, the state government established a state board of education and began providing education for both Blacks and Whites. The government also financed railroad construction with private entities. However, in some cases, these government subsidies for “internal improvements” ended in scandal and a burden of state debt.

When White Democrats regained control, a new constitution in 1875 did away with the state board of education, lowered salaries for local officials, set strict limits on property taxes and borrowing, and forbade governments from being involved in internal improvements, provisions that largely persisted in the 1901 Constitution. Local governments were kept under the watchful eye of the Legislature.

Almost as soon as it was enacted, amendments and legislative action began to create exceptions to allow governments to build roads and bridges and to assess certain taxes to pay for schools in select localities.

During the past 30 years, efforts to modernize the Alabama Constitution have included proposals to grant home rule to cities and counties. Still, only incremental changes and grants of authority have been made.

And while advocates for local government representing cities and counties continue to wish for greater local autonomy, they are resigned to making our complex and cobbled-together system work.

The Implications

Counties and cities in Alabama have, to varying degrees, learned that they must establish and maintain close working relationships with the Alabama House and Senate members representing their respective counties.

But even when relationships between the locals and their representatives in Montgomery are good, we still are left with a complicated dance of procedures, negotiations, and permissions to address basic problems.

Alabama's constitutional system creates multiple layers of law: the constitution, local amendments that create exemptions for localities, general laws passed by the Legislature that apply to the whole state, general laws that apply to specific localities, local laws passed by the Legislature, and local ordinances.

Each year, the Legislature considers local laws and amendments that apply to specific jurisdictions, most often to counties but sometimes to cities.

The work of local legislation consumes a considerable amount of legislative time and attention while the Legislature is in session. For the most part, if an agreement can be worked out between local legislators, the rest of the body will stand on the sidelines and not get involved.

However, on some occasions, disputes within a local delegation can create logjams and delays in the legislative process of the entire state. In the end, the Legislature holds power over local governments but, for the most part, is not held responsible for the operation of local government.

Counties

When the 1901 Constitution was conceived, counties were treated as simple administrative subdivisions of state government. Counties were to carry out functions of state government at the local level, such as elections, road maintenance, public health, and revenue collection.

They were not empowered to create local ordinances or determine what services to provide or what taxes to assess to pay for those services. More than a century later, the role and scope of county governments has vastly expanded.

However, the basic concept hasn't changed: Counties must ask the permission of the state Legislature to make basic administrative changes. And a new law or an amendment to the Constitution is required to make the change.

The implications of that way of doing business create situations like this: Facing financial stress, Pickens County had to close its financially distressed hospital in 2020. As of 2024, the only emergency medical response in the county consists of one ambulance serving the county. And that ambulance has to deliver patients to hospitals in Tuscaloosa County or Columbus, Mississippi, a lengthy round trip.

In two recent incidents, women have died of heart attacks after waiting more than an hour for an ambulance to arrive.³

The Pickens County Commission cannot raise revenue through local taxes or fees to address the crisis. That authority rests with the Alabama Legislature, which will not convene until January. So, the cash-strapped county limps along.

Another example: In Lawrence County, citizens demanded that the county commission take action after a pair of pit bulls, wandering from a neighbor's property, attacked and killed an 83-year-old Town Creek man who was tending his rose garden.⁴

Counties are required to operate an animal shelter, but Lawrence County can not pass its own ordinance for regulating dogs. The power to regulate dogs must be explicitly granted by the Legislature or by amendments to the Alabama Constitution. In fact, multiple constitutional amendments and local laws passed by the Legislature allow particular governments to regulate dogs.

State law does allow counties to adopt a provision of state law that requires owners to keep dogs on their own property. But opting in obliges the county to provide for its enforcement. That means additional expenses for animal control officers and for dealing with the increased number of impounded animals, the cost of their care, adoption, and, if a home isn't found, the animals' destruction. Those costs have to be borne by a local government that does not have the power to raise its own revenue.

In the wake of the tragedy, the Lawrence County Commission did adopt the state containment law and has shifted money in its budget to cover an additional animal control officer. But as the cost of care for impounded animals rises, the challenge of paying for it rises, too.

³ "This Alabama County Is Now Down to Just One Ambulance: 'It's Cost Lives,'" al, November 19, 2024, <https://www.al.com/news/2024/11/this-alabama-county-is-now-down-to-just-one-ambulance-its-cost-lives.html>

⁴ William Shelton Staff Writer, "83-Year-Old Lawrence County Man Fatally Mauled by Neighbors Dogs," The Moulton Advertiser, June 3, 2024, https://www.moultonadvertiser.com/news/article_177463c0-21c5-11ef-8a39-1b59d8c30ced.html.

The dilemma over dogs reflects Alabama's conflicting attitudes toward government. Alabamians, particularly those who live in unincorporated parts of counties, tend to oppose government regulation and want low taxes. County governments tend to respect those wishes. But there are also costs to that lack of regulation.

Cities

While cities enjoy a greater delegation of authority, including the power to tax (within prescribed limits) and to regulate land use through zoning, certain situations still require state legislative action. Ultimately, the Legislature retains all governmental powers and can limit, restrict, or override city actions. Because of that, cities still have to turn to the Legislature or constitutional amendment in many instances.

When Ozark wanted to regulate the operation of golf carts on city streets, it had to seek a constitutional amendment.

So, when voters in Dale County went to the polls this November, they were asked to weigh on this constitutional issue, which required a change to the fundamental law of the State of Alabama. Voters approved the measure, and yet another amendment has been added to a growing list of local constitutional amendments concerning golf carts on public roads.

When the City of Mobile wanted the county health department to monitor the conditions of temporary crawfish stands that are set up during Mardi Gras, the city had to pursue a local bill in the legislature to gain the authority.

Mobile also needed a local law to establish procedures for enforcing a weed abatement ordinance. This next year, the city will return to the Legislature for an amendment to that law so it can be applied to the repeated dumping of debris and junk.

Local Tax Questions Not Decided by Local Communities

Alabama's constitutional system creates a long and obstacle-filled journey for local communities to make some local decisions. This is especially true when it comes to taxation.

A 2018 proposed local constitutional amendment from Homewood provides an example.

The suburban city has among the best-funded and highest-performing schools in the state. However, looking at the growth in the system, Homewood school officials became concerned that they eventually might need additional revenue to finance school construction.

However, Homewood's combined state and local property taxes were already at the maximum allowed limit under the state constitution. A few localities in the state, including Homewood's neighbors Vestavia and Mountain Brook, had permission under a constitutional amendment to exceed the limit. Homewood officials wanted an exemption that would allow them to ask the citizens of Homewood to vote on a property tax that would exceed the "lid bill limit" if the need arose. The vote would not have raised taxes, but it would have opened the possibility of coming back to the city voters with a proposal in the future.

School officials first went to the local school board and persuaded the board to request this amendment. They then went to the Homewood City Council with the proposal. The Council agreed. Their next step was to go to the state legislative delegation to request that the matter be put before voters.

Jefferson County's local legislative delegation is the largest in the state and is comprised of all the legislators whose districts reach into Jefferson County. Because of the way the Republican majority of the Legislature has drawn the lines of legislative districts, a slim majority of the 23-member delegation are Republicans, thanks to the fact that some Republican members who live in other counties represent portions of Jefferson. On many issues, the delegation works cooperatively on local issues, but occasionally, the partisan mismatch of the delegation leads to disagreements.

Homewood's proposal happened to appear at one of those moments of discord over an unrelated issue. Arguments ensued. Eventually, though, the delegation agreed to allow the proposal to proceed to the ballot.

Because it was a constitutional amendment, the measure had to be voted on by all of Jefferson County. When the votes were counted, 65% of residents of Homewood had voted to approve the measure. However, a slight majority of voters in Jefferson County voted against it. The amendment failed.

Alabama's local property taxes are the second lowest in the nation. The only state with lower local property taxes is Arkansas, which has a state property tax that generates four times more per capita than Alabama's state property taxes. When state and local property taxes are considered together, Alabama generates less per capita in property taxes than any other state.

Unlike other taxes, Alabama citizens generally vote directly on whether to extend or raise property taxes. School systems, which rely on property taxes to provide local support for education, are finding increasing difficulty in gaining voter approval for increases or even extensions of existing property taxes.

In November, voters in Autauga County rejected a property tax increase proposal. That follows recent losses in Trussville, Fultondale, Vestavia Hills,

Tuscaloosa City, and Tuscaloosa County. Voters in Limestone and Choctaw counties rejected property tax extensions.

Some systems have won approval for extensions and increases over the past five years. Voters in Athens and Montgomery County approved extensions. Voters approved increases in Montgomery County, Pell City, Mountain Brook, Daphne, and the city of Madison.

The Alabama Constitution gives voters a direct say on property taxes. There is an appeal to that aspect of direct democracy, but it also creates challenges to providing services. Property tax rates are, for the most part set in the Constitution. In all Alabama's neighboring states, local governments adjust property tax rates up or down based on revenue needed to pay for services. Taxing authorities in other states include city and county governments, school boards, and some special districts. Rates are reset annually based on needs and the value of the property in the jurisdiction.

Effect on the Legislative Process

Advocates of home rule argue that local law-making in Montgomery works against local citizens' ability to represent their interests effectively. And it prevents local communities from addressing problems at the local level.

In addition, this concern with local matters keeps state legislators from concentrating on the state policy they are elected to shape.

Defenders of the system say that the Legislature plays an oversight role, ensuring that cities and counties stay within the bounds of state law. Aspects important to Alabamians, such as respecting property rights, limiting taxes, and orderly structures for boards and agencies, are guarded by the Legislature. Besides, Alabama law is flexible, allowing the law to be tailored to meet the needs of local situations without imposing one-size fits all solutions.

According to a PARCA analysis of the 2024 legislative session, about a quarter of the bills introduced pertained to local municipalities and counties. More than 80 local bills made it through the legislative process in 2024, as tracked by the Alabama Association of County Commissions.⁵

About 25 laws concerned local taxes or fees, 16 involved salaries of elected officials, 15 concerned the composition or procedures of local boards, and 19 involved various county's sheriff's offices, including several related to the use of credit cards or expense accounts.

⁵ "Legislative Reports | ACCA," accessed November 19, 2024, <https://www.alabamacounties.org:443/legislation/legislative-reports/>, <https://www.alabamacounties.org/legislation/legislative-reports/>.

The state constitution forbids pensions for elected officials, but each session, the Legislature authorizes public votes on constitutional amendments to allow various officials to participate in the state retirement system.

According to the constitution, court costs and fees are supposed to be uniform across the state. However, the Legislature frequently authorizes votes on local amendments, allowing local jurisdictions to assess additional local court costs to pay for operations or facilities. Thanks to that flock of amendments, almost all the counties now can authorize changes in court costs by going through the Legislature rather than adding another amendment.

Salaries for county elected officials were originally supposed to be uniform according to the constitution. Now, almost all counties have local amendments that allow the Legislature to adjust salaries.

One antiquated aspect of local legislation is that a local law must be advertised in a newspaper in the affected county once a week for four consecutive weeks. before it can be acted upon by the Legislature. Once it is introduced in its advertised form, that local bill cannot be amended in any substantial way.

If, during the legislative process, the need for an amendment is identified, the bill has to be readvertised, which, in most cases, means it cannot be enacted until the next legislative session, generally a year later.

Changes to Home Rule

Beyond those piecemeal changes, some broader changes have decreased the volume of local legislation.

Prior to 1978, the Legislature often passed bills pertaining to specific cities despite the fact the constitution said they could not. At the time, the Legislature's workaround for that constitutional provision was to specify that a law pertained to a city of a certain population. Birmingham, for instance, was a city of 300,000. The Alabama Supreme Court ruled the Legislature could no longer engage in that practice.

In response, the Legislature created eight classes of cities based on their populations at the time of the 1970 Census. From that point forward, any law passed governing the structure or powers of a city had to apply to all cities in a particular class.

Under the scheme, Birmingham was, and is, the only Class 1 city. Mobile is the only Class 2. In the case of those two cities, a law can be passed that pertains only to one of those cities. And that law is a general law and can go beyond what is allowed by state law.

After that, it gets more complicated. Huntsville and Montgomery are Class 3 cities, while Gadsden and Tuscaloosa are the only Class 4 cities. In those cases, a change to the law would apply to both cities. Nine cities comprise Class 5 and 16 cities comprise Class 6. Thirty-three cities are in Class 7, and 392 cities are in Class 8.

The classification system has decreased the volume of legislation regarding cities but has not ended the practice of local legislation. Bills pertaining to specific cities still move through the Legislature, and in many cases, such as a call for a referendum on local property taxes, cities are required to petition the Legislature.

Economic Development Powers Broadened

Over the course of the twentieth century, various counties and cities secured the power to engage in economic development projects. Eventually, 47 counties had separate amendments that allowed them to pursue activities such as financing and developing industrial parks to attract industry.

Finally, in 2004, voters approved Amendment 772, which set guidelines on how counties and cities could use taxpayer dollars to help recruit businesses.

Under the amendment, all counties gained the ability to do things like purchasing and improving property, selling, leasing and granting property, granting public funds, and issuing bonds.

Two Counties Granted Home Rule Through Amendments

Two Alabama counties, Shelby and Baldwin, have passed constitutional amendments giving their county governments home rule, though neither has the power to levy taxes.

Those counties have the power to pass ordinances, regulate land use through zoning; operate park and recreation departments, libraries, health care facilities and services; regulate litter, solid waste collection and disposal; public transportation; enforce codes; and engage in economic development.

Both those counties are among the fastest-growing counties in Alabama, and their broader powers have both facilitated and aided in managing that growth. Through local legislation, Jefferson County was granted zoning authority, but does not enjoy the broader authority to manage its affairs that that Shelby and Baldwin have.⁶

⁶ Other “Alabama_County_Commissioners_Handbook_13th_edition.Pdf,” accessed December 6, 2024, https://alison.legislature.state.al.us/files/pdf/Isa/ALI/Publications/Alabama_County_Commissioners_Handbook_13th_edition.pdf.

Counties Now Have the Option for Limited Home Rule

The wider availability of home rule powers has been the subject of long-running constitutional reform efforts. Recognizing that broad home rule would not gain legislative approval, a more modest grant of certain home rule powers was achieved with the passage of Amendment 909 in 2022.

Amendment 909, which has now been incorporated in the general body of the 2022 Constitution, allows counties the option of engaging in five limited authorities.

As described by the Alabama Association of County Commission, those authorities give counties the ability, if they choose to exercise the option, to:

1. Address personnel matters in the absence of state or local laws authorizing such programs.
2. Set up community programs for litter control, including animal control programs.
3. Provide public transportation and public road safety programs.
4. Enact programs related to carrying out the business of the county commission.
5. Provide emergency assistance programs, such as ambulance services and emergency management agencies.

As always, the amendment does not create the authority to levy taxes or assess fees. It also stipulates that no action can be taken that would infringe on private property rights, thus no planning or zoning authority.

Local Amendments Now Organized by County

In 2022, voters also approved reorganizing and streamlining the Alabama Constitution. The new constitution makes it easier to find all local amendments to the constitutions that had, heretofore, been scattered throughout the document based on when each was passed.

Now, all local amendments are collected in a separate volume from the body of the general constitution. The amendments are organized by county and by an organizational scheme that numbers the amendments for each in a consistent order.

As amendments continue to be added, they are moved to their appropriate location. But those organizational changes will not likely change the pace of new local amendments ballooning the state constitution.

Conclusion

As a general principle, most people would agree that local decisions are best made closest to home, where citizens have direct access to public officials and a more direct ability to hold officials accountable at election time.

Local governments are held responsible by local citizens for the efficient and effective provision of government services. Those local officials, not the local legislator, get the phone call when a problem occurs.

At the same time, though, everyone has a different conception of what home rule really means and how broad or limited it should be. Often, the same citizens who want government intervention in one circumstance are adamantly opposed to government interference in another.

The Legislature is, rightly, the body elected to provide general ground rules under which all cities and counties operate. The laws of the state should provide equal protection and equal rights. However, legislators are not elected to address problems specific to localities.

The Legislature meets 30 days a year (within 105 calendar days). The Legislature determines how tens of billions of tax dollars are spent each year, funding schools and universities, highways, healthcare, prisons, and parks, and regulation of agriculture and the environment.

Do they need to consider the regulation of golf carts, the management of animals, or the policies around credit cards for a specific locale? Might that time be better spent on the big picture while leaving local details to the officials elected to serve the people?



Public Affairs Research Council of Alabama

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The Public Affairs Research Council of Alabama, PARCA, is Alabama’s trusted source for non-partisan, non-ideological research, founded in 1988 by former Governor Albert Brewer.

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

HOW WE WORK

We conduct *non-ideological 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 nonprofit 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.

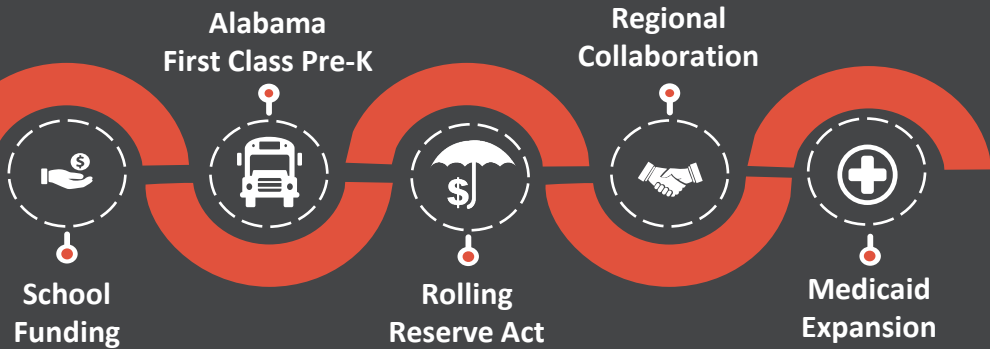


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