

1 SB273
2 126765-1
3 By Senators Orr and Pittman (Constitutional Amendment)
4 RFD: Finance and Taxation General Fund
5 First Read: 24-MAR-11

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8 SYNOPSIS: Under existing law, the Alabama Trust Fund
9 Board may transfer up to seventy-five percent (75%)
10 of the realized and unrealized capital gains from
11 the Alabama Trust Fund each fiscal year. The
12 current definition of unrealized capital gains
13 allows oil and gas capital payments received during
14 the fiscal year to be included in the calculation
15 of the unrealized gains. Also, the current
16 definition of realized capital gains does not
17 address the method of calculating the realized
18 capital gains from a public exchange traded equity
19 asset both purchased and sold in the same fiscal
20 year.

21 This bill would propose an amendment to
22 Section II of Amendment 666 to the Constitution of
23 Alabama of 1901, now appearing as Section II of
24 Section 219.04 of the Official Recompilation of the
25 Constitution of Alabama of 1901, as amended, to
26 clarify that oil and gas capital payments received
27 during the fiscal year are excluded from the

1 calculation of unrealized capital gains and
2 establish the manner in which the realized gains
3 from a public exchange traded equity asset both
4 purchased and sold in the same fiscal year are
5 calculated.

6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To propose an amendment to Section II of Amendment
12 666 to the Constitution of Alabama of 1901, now appearing as
13 Section II of Section 219.04 of the Official Recompilation of
14 the Constitution of Alabama of 1901, as amended, to clarify
15 that oil and gas capital payments received during the fiscal
16 year are excluded from the calculation of unrealized capital
17 gains in the Alabama Trust Fund; and to establish the manner
18 in which the realized gains from a public exchange traded
19 equity asset in the Alabama Trust Fund that is both purchased
20 and sold in the same fiscal year are calculated.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. The following amendment to the
23 Constitution of Alabama of 1901, as amended, is proposed and
24 shall become valid as a part thereof when approved by a
25 majority of the qualified electors voting thereon and in
26 accordance with Sections 284, 285, and 287 of the Constitution
27 of Alabama of 1901, as amended:

1 PROPOSED AMENDMENT

2 AMENDMENT OF SECTION II OF AMENDMENT 666

3 "Section II. As used in this amendment, the
4 following words and phrases shall have following respective
5 meanings:

6 "Alabama Trust Fund" means the irrevocable,
7 permanent trust fund created by Amendment No. 450 to the
8 Constitution of Alabama of 1901 [§ 219.02].

9 "Alabama Capital Improvement Trust Fund" means one
10 of the special trust funds created by this amendment.

11 "Capital Improvements" means capital outlay projects
12 that include the planning, designing, inspection, purchasing,
13 construction, reconstruction, improvement, repair or
14 renovation of permanent buildings, docks, structures and sites
15 therefor for the executive, legislative or judicial branches
16 of state government. The term "Capital Improvement" shall also
17 mean the construction or improvement of roads and bridges in
18 the highway system; payment of debt service on the bonded
19 indebtedness issued by the State of Alabama or any public
20 corporation or authority of the State of Alabama; funding
21 economic development and industrial recruitment activities;
22 and the procurement of technical equipment, including computer
23 and telecommunications equipment, required for the operation
24 of any governmental entity.

25 "County and Municipal Capital Improvement Trust
26 Fund" means one of the special trust funds created by this
27 amendment.

1 "Docks Improvements" means the acquisition,
2 development, construction, improvement, expansion and
3 modernization of state docks facilities (including, without
4 limitation, cargo handling facilities) at the Port of Mobile.

5 "Docks Improvement Costs" means all costs and
6 expenses incurred in connection with the Capital Improvements,
7 including, without limitation, the following:

8 (a) The costs of acquiring, constructing, installing
9 and equipping Docks Improvements, including all obligations
10 incurred for labor and to contractors, subcontractors,
11 builders and materialmen.

12 (b) The costs of acquiring land or rights in land
13 and any costs incidental thereto, including recording fees.

14 (c) The costs of contract bonds and of insurance of
15 all kinds that may be required or necessary during the
16 acquisition, construction or installation of Docks
17 Improvements.

18 (d) The costs of architectural and engineering
19 services, including test borings, surveys, environmental
20 mitigation, supervision of construction and the like with
21 respect to Docks Improvements.

22 (e) The costs of acquiring and installing fixtures
23 and equipment, excavation, removal and demolition of
24 structures, and provisions for drainage, stormwater retention,
25 installation of utilities, and similar facilities, and paving.

1 (f) Interest accruing with respect to General
2 Obligation Bonds for a period of up to two years after the
3 issuance of such General Obligation Bonds.

4 (g) All costs, expenses and fees incurred in
5 connection with the issuance of General Obligation Bonds,
6 including, without limitation, all legal, accounting,
7 financial, printing, recording, filing and other fees and
8 expenses.

9 (h) The costs for obtaining bond insurance, letters
10 of credit, or other forms of credit enhancement or liquidity
11 facilities.

12 (i) All other costs of a nature comparable to or
13 required in connection with those described.

14 (j) Reimbursement to any person of any of the
15 foregoing costs incurred by such person either for its own
16 account, or for the account of the State of Alabama and
17 without regard to when incurred.

18 "Economic Development Costs" means the costs and
19 expenses incurred or to be incurred by the state in connection
20 with economic development projects and the recruitment of
21 industrial prospects to the state including, without
22 limitation, site preparation and infrastructure improvements,
23 the costs of training and educating workers in the state and
24 acquiring and constructing training facilities in the state,
25 together with the costs, expenses and fees incurred in
26 connection with the issuance of General Obligation Bonds for
27 such purposes and the costs for obtaining bond insurance and

1 other forms of credit enhancement on General Obligation Bonds
2 issued for such purposes, and the reimbursement to any person
3 of any of the foregoing costs incurred by such person either
4 for its own account or for the account of the State of
5 Alabama, its agencies or authorities.

6 "Fiscal Year" means the period beginning October 1
7 and ending September 30 of the following calendar year.

8 "General Fund" means the general fund in the State
9 Treasury of the State of Alabama.

10 "General Obligation Bonds" means bonds, including
11 refunding bonds, to be issued by the State of Alabama for the
12 purpose of financing Docks Improvements Costs, Economic
13 Development Costs, Local Government Match Funds and Municipal
14 Infrastructure Costs, as provided in this amendment.

15 "Local Government Match Funds" means the monies
16 required to be provided by the State of Alabama as a condition
17 to the issuance of federal grant revenue bonds for road and
18 bridge improvements, together with the costs, expenses and
19 fees incurred in connection with the issuance of General
20 Obligation Bonds for such purposes and the costs of obtaining
21 bond insurance and other forms of credit enhancement on
22 General Obligation Bonds for such purposes.

23 "Municipal Infrastructure Costs" means the cost of
24 acquiring and constructing municipal infrastructure
25 improvements through the Alabama Department of Transportation,
26 together with the costs, expenses and fees incurred in
27 connection with the issuance of General Obligation Bonds for

1 such purposes and the costs of obtaining bond insurance and
2 other forms of credit enhancement on General Obligation Bonds
3 for such purposes.

4 "Oil and Gas Capital Payment" means any payment
5 (including any royalty payment) received by the state or any
6 agency or instrumentality thereof as all or part of the
7 consideration for the sale, leasing or other disposition by
8 the state or any agency or instrumentality thereof of any
9 right to explore and drill for or to produce oil, gas or other
10 hydrocarbon minerals in any area on the water side of the high
11 water mark of Mobile Bay or in any other offshore area and
12 shall include any revenue by the state from federal oil and
13 gas leases off the coast of Alabama. Any royalty or other
14 payment, with the exception of any taxes heretofore or
15 hereafter levied, that is based upon or determined with
16 respect to, the production of oil, gas or other hydrocarbon
17 minerals and that is paid to the state or any agency or
18 instrumentality thereof regardless of the time of such payment
19 shall be considered an oil and gas capital payment.

20 "Realized Capital Gains" means gains from the sale
21 or exchange of public exchange traded equity assets of the
22 Alabama Trust Fund, ~~other than fixed income assets,~~ to the
23 extent they exceed losses from the sale of such assets. The
24 amount of gain or loss on the sale of ~~an~~ a public exchange
25 traded equity asset shall be determined by subtracting from
26 the proceeds of selling the asset its fair market value as of
27 the end of the immediately preceding fiscal year, ~~or, in the~~

1 ~~case of the fiscal year in which this amendment is ratified,~~
2 ~~its fair market value as of the first business day following~~
3 ~~ratification of this amendment. The amount of gain or loss of~~
4 ~~public exchange traded equities obtained and sold during the~~
5 ~~same fiscal year shall be determined by subtracting from the~~
6 ~~proceeds of selling the asset the purchase price of the asset.~~

7 "Trust Income" means the Trust Income as defined in
8 Amendment Numbers 450 and 488 to the Constitution of Alabama
9 of 1901 [§§ 219.02 and 219.03].

10 "Unrealized Capital Gains" means the excess of the
11 fair market value of the public exchange traded equity assets
12 of the Alabama Trust Fund on the last day of the fiscal year
13 over the fair market value of the ~~Trust Fund~~ public exchange
14 traded equity assets on the last day of the immediately
15 preceding fiscal year. The fair market value of the ~~Trust Fund~~
16 public exchange traded equity assets on the last day of a
17 fiscal year shall be determined without including the Trust
18 Income of public exchange traded equity assets for the fiscal
19 year; ~~r~~ Realized ~~c~~ Capital ~~g~~ Gains for the fiscal year; or ~~the~~
20 ~~fair market value of fixed income assets~~ Oil and Gas Capital
21 Payments received during the fiscal year invested in public
22 exchange traded equity assets. ~~For the fiscal year beginning~~
23 ~~October 1, 2001, the fair market value of the assets on~~
24 ~~September 30, 2002, shall be determined without regard to the~~
25 ~~fair market value on the date of transfer of the assets~~
26 ~~transferred from the Alabama Heritage Trust Fund.~~

1 Section 2. The provision of this amendment shall not
2 affect the distribution of any realized or unrealized gains
3 approved prior to the ratification of this amendment.

4 Section 3. An election upon the proposed amendment
5 shall be held in accordance with Sections 284 and 285 of the
6 Constitution of Alabama of 1901, now appearing as Sections 284
7 and 285 of the Official Recompilation of the Constitution of
8 Alabama of 1901, as amended, and the election laws of this
9 state.

10 Section 4. The appropriate election official shall
11 assign a ballot number for the proposed constitutional
12 amendment on the election ballot and shall set forth the
13 following description of the substance or subject matter of
14 the proposed constitutional amendment:

15 "Proposing an amendment to Section II of Amendment
16 666 to the Constitution of Alabama of 1901, now appearing as
17 Section II of Section 219.04 of the Official Recompilation of
18 the Constitution of Alabama of 1901, as amended, to clarify
19 that oil and gas capital payments received during the fiscal
20 year are excluded from calculation of unrealized capital gains
21 in the Alabama Trust Fund and to establish the manner in which
22 the realized gains from an asset in the Alabama Trust Fund
23 that is both purchased and sold in the same fiscal year are
24 calculated.

25 "Proposed by Act _____."

26 This description shall be followed by the following
27 language:

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"Yes () No ()."