

1 SB147  
2 133104-1  
3 By Senators Orr and Pittman (Constitutional Amendment)  
4 RFD: Finance and Taxation General Fund  
5 First Read: 07-FEB-12

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

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

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

5  
6 A BILL  
7 TO BE ENTITLED  
8 AN ACT  
9

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

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

27 PROPOSED AMENDMENT

1 AMENDMENT OF SECTION II OF AMENDMENT 666

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

5 "Alabama Trust Fund" means the irrevocable,  
6 permanent trust fund created by Amendment No. 450 to the  
7 Constitution of Alabama of 1901.

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

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

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

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

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

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

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

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

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

23           "(e) The costs of acquiring and installing fixtures  
24           and equipment, excavation, removal and demolition of  
25           structures, and provisions for drainage, stormwater retention,  
26           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.

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 the public exchange traded equity assets for the  
19 fiscal year; ~~realized capital gains~~ Realized Capital Gains for  
20 the fiscal year; or ~~the fair market value of fixed income~~  
21 ~~assets. For the fiscal year beginning October 1, 2001, the~~  
22 ~~fair market value of the assets on September 30, 2002, shall~~  
23 ~~be determined without regard to the fair market value on the~~  
24 ~~date of transfer of the assets transferred from the Alabama~~  
25 ~~Heritage Trust Fund. Oil and Gas Capital Payments received~~  
26 ~~during the fiscal year invested in public exchange traded~~  
27 ~~equity assets.~~"

1           Section 2. The provisions of this amendment shall  
2 not affect the distribution of any realized or unrealized  
3 gains 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 ( )."