

1 SB27
2 171794-1
3 By Senator Allen (Constitutional Amendment)
4 RFD: Finance and Taxation General Fund
5 First Read: 09-SEP-15

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8 SYNOPSIS: This bill would propose an amendment to the
9 Constitution of Alabama of 1901, to create the
10 Alabama Legacy Trust Fund.

11 The proposed amendment would require the
12 Alabama Trust Fund Board of Trustees to administer
13 the fund.

14 The proposed amendment provides for the
15 distribution of certain payments received by the
16 state from settlements and other monies.

17 The proposed amendment also provides that
18 trust capital be held in perpetual trust and
19 provides for the distribution of trust income.

20 The proposed amendment would require the
21 Legislature to enact legislation creating an
22 authority to issue revenue bonds using any
23 Deepwater Horizon Oil Spill Disaster Settlement to
24 fund the bond payments.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 Proposing an amendment to the Constitution of
4 Alabama of 1901, to create the Alabama Legacy Trust Fund; to
5 provide for the distribution of payments from settlements and
6 other monies; to provide for the holding of trust capital in
7 perpetual trust; and to provide for the distribution of trust
8 income.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. The following amendment to the
11 Constitution of Alabama of 1901, as amended, is proposed and
12 shall become valid as a part thereof when approved by a
13 majority of the qualified electors voting thereon and in
14 accordance with Sections 284 and 285 of the Constitution of
15 Alabama of 1901, now appearing as Sections 284 and 285 of
16 Official Recompilation of the Constitution of Alabama of 1901
17 as amended:

18 PROPOSED AMENDMENT

19 Section I. For the continuing benefit of the State
20 of Alabama and the citizens of the state, there is hereby
21 created the Alabama Legacy Trust Fund, an irrevocable
22 permanent trust fund, funded and administered in accordance
23 with this amendment.

24 Section II. For the purposes of this amendment, the
25 following terms shall have the following meanings:

26 (a) BOARD. The Board of Trustees of the Alabama
27 Trust Fund.

1 (b) DEEPWATER HORIZON OIL SPILL DISASTER SETTLEMENT.

2 Any payment allocated to the state pursuant to any settlement
3 of the Deepwater Horizon Oil Spill Disaster Lawsuit associated
4 with the oil spill disaster in the Gulf of Mexico on April 20,
5 2010, that is not otherwise dedicated under federal law, court
6 order, or settlement agreement.

7 (c) FISCAL YEAR. The fiscal year of the state as may
8 from time to time be provided by law.

9 (d) STATE. The State of Alabama.

10 (e) SETTLEMENT PROCEEDS. Any payment of \$2,000,000
11 or more received by the state or any agency of the state
12 pursuant to any court order or a negotiated settlement where
13 the state or agency thereof is a party and which is entered
14 after the effective date of this amendment. The term shall not
15 include any of the following: (1) Any proceeds ordered or
16 negotiated as part of a judgement or settlement which are
17 designated as restitution, recovery or rescission to a
18 specific entity or persons and received by the state or agency
19 of the state for distribution to such entity or persons; (2)
20 Proceeds ordered or negotiated for reimbursement of litigation
21 or investigative expenses or costs; (3) Proceeds designated
22 for examination or audit costs and expenses. Such expenses and
23 costs to include reimbursement for any actual pre-settlement
24 and prejudgment examination and audit costs as well as any
25 projected ongoing examination or audit expenses created as a
26 result of any settlement or court order requiring ongoing
27 audits or examinations; (4) Any proceeds specifically

1 designated for a particular public purpose, to benefit a
2 particular public interest or to the federal government. The
3 term shall also mean any payments that would have previously
4 been distributed pursuant to Section 36-15-4.2, Code of
5 Alabama, 1975. The term shall not include any funds received
6 by the state or any agency of the state pursuant to federal
7 statute or regulation, or as a result of a tax assessment.

8 (f) TRUST CAPITAL. All assets of the trust fund
9 other than trust income.

10 (g) TRUSTEE. A member of the Board of Trustees of
11 the Alabama Trust Fund.

12 (h) TRUST FUND. The Alabama Legacy Trust Fund.

13 (i) TRUST INCOME. The net income received by the
14 state from the investment and reinvestment of assets of the
15 trust fund, determined in accordance with this amendment.

16 Section III. The trust fund shall be under the
17 management and control of the Board and all powers necessary
18 or appropriate for the management and control of the trust
19 fund shall be solely vested in the Board. All powers and
20 duties granted to the Board for the investment of monies in
21 the Alabama Trust Fund shall also apply to investment of
22 monies in the Legacy Trust Fund.

23 Section IV. (a) Any Deepwater Horizon Oil Spill
24 Disaster Settlement shall be obligated to fund the issuance
25 and debt service of revenue bonds issued pursuant to Section
26 VII. Proceeds from the bond issuance provided for in Section
27 VII shall first be used to repay the Alabama Trust Fund Rainy

1 Day Account for the \$161,565,874 transferred to the State
2 General Fund in fiscal year 2010 pursuant to Amendment 803 of
3 the Constitution of Alabama of 1901 and to repay the Alabama
4 Trust Fund for the \$437,390,829 transferred to the State
5 General Fund over fiscal years 2013, 2014 and 2015 pursuant to
6 Amendment 856 of the Constitution of Alabama of 1901. Any bond
7 proceeds remaining after these repayments shall be deposited
8 into the Alabama Legacy Trust Fund.

9 (b) Any other settlement proceeds shall first be
10 used to repay the Alabama Trust Fund Rainy Day Account and the
11 Alabama Trust Fund as stated in subsection (a), if these
12 repayments have not yet been made. Any settlement proceeds
13 remaining after these repayments shall be deposited into the
14 Alabama Legacy Trust Fund.

15 (c) The trust fund shall be augmented by (1) other
16 moneys or assets as the Legislature may by law appropriate and
17 transfer to the trust fund as a permanent part thereof; (2)
18 other moneys or assets as may be contributed to the trust fund
19 from any source; and (3) trust income reinvested in the trust
20 fund as provided in Section V of this amendment.

21 Section V. (a) Assets in the Fund shall be held in
22 perpetual trust and shall not be appropriated by the
23 Legislature or expended or disbursed for any purpose other
24 than to acquire eligible investments in accordance with this
25 amendment. All eligible investments acquired, in whole or in
26 part, with moneys constituting part of the trust capital shall
27 to the extent of such moneys constitute part of the trust

1 capital. Beginning the first year the receipts are deposited
2 into the fund, five percent of the market value of invested
3 assets shall be used for distribution. The first year after
4 the receipts are deposited into the fund, five percent of the
5 average of the market value of the initial investment and the
6 prior year's invested assets shall be used for distribution.
7 The second year after the receipts are deposited into the
8 fund, five percent of the average of the market value of the
9 initial investment and two prior year's invested assets shall
10 be used for distribution. Beginning the third year after
11 receipts are deposited into the funds, and each fiscal year
12 thereafter, five percent (5%) of the average market value of
13 invested assets of the Legacy Trust Fund as of the end of the
14 three fiscal years ending one, two, and three years prior to
15 the beginning of the fiscal year for which the distribution is
16 being made shall be used for distribution. Distribution shall
17 be as follows: 80 percent of 5% of the average market value
18 invested shall be transferred to the State General Fund, 10
19 percent shall be distributed to the Alabama Capital
20 Improvement Trust Fund as set out in Section 219.04 of the
21 Constitution of Alabama of 1901, (Amendment 666), and 10
22 percent shall remain in the Alabama Legacy Trust Fund.

23 (b) To the extent appropriate and not at the time
24 prohibited by law, the Board shall use the facilities of the
25 State Treasurer in the administration of the trust fund,
26 including, but not limited to, the keeping of records, the

1 management of bank accounts, the transfer of funds, and the
2 safekeeping of securities evidencing investments.

3 (c) An annual audit of the trust fund shall be
4 performed for each fiscal year by the Department of Examiners
5 of Public Accounts, or, in the discretion of the Board, by an
6 independent certified public accounting firm. A report of each
7 audit shall be prepared in accordance with applicable
8 accounting principles. The Board shall prepare and publicize
9 financial and other information concerning the trust fund as
10 may be provided by law. In the absence of any law directing
11 the preparation and publication of reports, the Board shall
12 prepare or cause to be prepared and publicize, within 30 days
13 after the end of each quarterly period in each fiscal year, a
14 report containing all of the following:

15 (1) A statement of the trust capital then held in
16 the trust fund showing any changes since the last quarterly
17 report.

18 (2) A statement of the trust income received during
19 the quarterly period in question.

20 (3) A statement of the investments then held in the
21 trust fund including descriptions and respective values.

22 (4) A statement of the trust income received to date
23 during the current fiscal year.

24 (5) Any other information determined by the Board to
25 reflect a full and complete disclosure of the financial
26 operations of the trust fund.

1 Section VI. No trustee shall be personally liable
2 for any liability, loss, or expense suffered by the trust fund
3 unless the liability, loss, or expense results from the
4 unreasonable conduct, willful misconduct or wrongdoing of the
5 trustee.

6 Section VII. The Legislature shall enact appropriate
7 legislation creating an authority to issue revenue bonds from
8 which the sources of payment of the bonds shall be any
9 Deepwater Horizon Oil Spill Disaster Settlement. The principal
10 amount of authority obligations shall not exceed the total
11 amount of the Deepwater Horizon Oil Spill Disaster Settlement.
12 The proceeds from such bond issuance shall be used to pay the
13 costs of issuing the bonds and as specified in Section IV.
14 Bonds issued by the authority shall be solely and exclusively
15 an obligation of the authority and shall not create an
16 obligation or debt of the state. The Legislature may further
17 enact legislation implementing the provisions of this
18 amendment.

19 Section VIII. This amendment shall be
20 self-executing. The Legislature may enact laws supplemental to
21 this amendment that are in furtherance of the purposes and
22 objectives of this amendment and not inconsistent with this
23 amendment.

24 Section IX. All laws or parts of laws in conflict
25 with this amendment are repealed, including, without
26 limitation, Section 36-15-4.2, Code of Alabama 1975, as
27 amended.

1 Section 2. An election upon the proposed amendment
2 shall be held in accordance with Sections 284 and 285 of the
3 Constitution of Alabama of 1901, now appearing as Sections 284
4 and 285 of Official Recompilation of the Constitution of
5 Alabama of 1901 as amended, and the election laws of this
6 state.

7 Section 3. The appropriate election official shall
8 assign a ballot number for the proposed constitutional
9 amendment on the election ballot and shall set forth the
10 following description of the substance or subject matter of
11 the proposed constitutional amendment:

12 "Proposing an amendment to the Constitution of
13 Alabama of 1901, to create the Alabama Legacy Trust Fund and
14 to provide for the distribution of certain settlement proceeds
15 by the state to be deposited into the trust fund, to be held
16 in perpetual trust for the benefit of the State of Alabama and
17 its citizens, and to pledge the Deepwater Horizon Oil Spill
18 Disaster Settlement as debt service for the issuance of
19 revenue bonds to repay the Alabama Trust Fund Rainy Day
20 Account and the Alabama Trust Fund.

21 "Proposed by Act _____."

22 This description shall be followed by the following
23 language:

24 "Yes () No ()."