



## **SPECIAL CONSTITUTIONAL AMENDMENT ELECTION**

**TUESDAY, SEPTEMBER 18, 2012**

Alabama faces a crisis in funding for the fiscal year that begins in less than a month. Projected revenues from current taxes fall far short of meeting the expenditures in the General Fund budget. Over half of that budget is for health services and public safety expenditures. This vote allows citizens to vote on whether to use additional funds in the Alabama Trust Fund, the state's savings account, to meet the shortfall in revenue

The only amendment on the ballot on September 18 is one dealing with how and when money is distributed from the Alabama Trust Fund. The necessity for this special election is that the 2012 budget goes into effect on October 1, and the constitution requires it to be balanced. If money cannot be taken from the trust fund, immediate cuts must ensue, or other income found.

This trust fund contains revenues from oil and gas operations in state waters and earnings on the investments of those revenues. Money is transferred from the trust fund to the state's General Fund, to the Forever Wild fund and to capital improvement funds for city and county governments. Funds have also been transferred from the overall trust fund account to emergency rainy day accounts within the trust fund; from which amounts have been temporarily transferred to the Education Trust Fund (which funds education in the state) and to the General Fund (which funds all other state functions). These rainy day transfers are required to be paid back to the rainy day accounts.

The amendment addresses two issues but requires a yes or no vote on the entire amendment.

First, the amendment provides a new formula and procedure for determining how much money will be distributed from the trust fund annually to each entity receiving funds. It also provides that the Trustees who administer the fund can decide to distribute less money if they determine that is necessary to preserve the invested assets of the fund.

Second, it provides for the additional transfer of \$145.8 million a year from the trust fund to the General Fund in each of the next three years to "provide adequate funding for the State General Fund budget" and, according to the ballot language, "to prevent the mass release of prisoners" and "to protect critical health services to Alabama children, elderly, and mothers". Alabama Trust Fund assets on March 31, 2012 exceeded \$ 2 billion.

See below for answers to questions about the Alabama Trust Fund, the proposed new procedure, why there is a special election, and the possible effects of a yes or no vote.

**PLEASE NOTE** that this amendment does not take money from the Education Trust Fund, which is a separate fund.

## QUESTIONS

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## KEY TERMS

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Definitions of terms used in the amendment and on the ballot. Starred [\*] terms in the answers to the questions below are those defined in this Key Terms section.

**1. What is the precise language as it will appear on my ballot?**

Shall the following Amendment be adopted to the Constitution of Alabama?

Proposed Statewide Amendment

Proposing an amendment to the Constitution of Alabama of 1901, to provide adequate funding for the State General Fund budget, to prevent the mass release of prisoners from Alabama prisons, and to protect critical health services to Alabama children, elderly, and mothers by transferring funds from the Alabama Trust Fund to the State General Fund beginning with the state's 2012-2013 fiscal year and concluding with the state's 2014-2015 fiscal year; to provide a new procedure for distributions made from the Alabama Trust Fund beginning 2012-2013 fiscal year; to create a County and Municipal Government Capital Improvement Trust Fund advisory committee; and to provide further for distributions made from the County and Municipal Government Capital Improvement Trust Fund. (Proposed by Act No. 2012-490)

Yes  
No

**2. What is the summary/synopsis of the amendment from the bill authorizing the amendment vote?**

To propose an amendment to the Constitution of Alabama of 1901, to provide a new procedure for distributions made from the Alabama Trust Fund beginning with the 2012-2013 fiscal year; to provide further for distributions made from the County and Municipal Government Capital Improvement Trust Fund; to remove the requirement for additional transfers to the County and Municipal Government Capital Improvement Trust Fund under certain circumstances; to create an advisory committee for the County and Municipal Government Capital Improvement Trust Fund; to provide for the transfer of funds from the Alabama Trust Fund to the State General Fund beginning with the state's 2012-2013 fiscal year and concluding with the state's 2014-2015 fiscal year; to repeal conflicting provisions of the Constitution of Alabama of 1901; and to repeal Sections 11-29-5 and 11-66-5, Code of Alabama 1975. (SB147 enrolled 2012 Session)

[Read Bill SB147 \(the enabling legislation\).](#)

**3. Why is the amendment vote happening before the November election?**

The Legislature passed a General Fund Budget that spends more than \$150 million dollars more than the state expects to receive in taxes and other revenues.

The next General Fund budget year (FY2013) begins October 1, 2012.

The General Fund budget finances all state services except education.

The Alabama Constitution requires the budget be balanced.

#### **4. Why did the Legislature pass an unbalanced budget?**

The General Fund budget passed by the legislature will balance if the amendment passes. The shortfall in revenues for the fiscal year beginning October 1 will be made up by additional distributions and transfers to the General Fund from the Alabama Trust Fund (ATF), which has been called Alabama's savings account. (See below for a description of the ATF.)

Slow economic growth continues to keep tax monies collected at levels too low to provide essential services.

Federal stimulus money is no longer available to supplement state revenues. Previously authorized General Fund Rainy Day Account money from the ATF will not be available until previous withdrawals are repaid to the ATF.

The Alabama Constitution limits how tax monies may be raised and spent (earmarking), and how much money can be distributed to the General Fund from the ATF. So, the Legislature is asking the voters to amend the Constitution in order to use money from the ATF to avoid further cutting of essential state services.

Legislators transferred limited amounts of monies from the Alabama Education Trust (ETF) fund to the General Fund based on an Attorney General's opinion, raised fees, and established a sales tax on Internet purchases if the federal government passes a law allowing such a tax. These actions are not enough.

The bulk of Education Trust Fund monies cannot be transferred to the General Fund due to constitutional protections. The September amendment does not seek to change this.

In Fiscal Year 2012 proration (cuts) in the GF was at 15%. The current revenue shortfall could make proration in the coming year even higher.

Legislators and the Governor have stated that cutting Medicaid and prison system funds any further than they have been cut due to the recession will endanger the public's health and safety.

Protecting the public's health and safety are two major duties of state government.

Legislators and the Governor have stated that they will not raise taxes.

## 5. Why is the amendment being called the Medicaid Amendment?

A major part of the amendment transfers money from the Alabama Trust Fund to the General Fund.

Medicaid receives the most money from the General Fund – currently over 34%.

Medicaid	34.33%
Corrections	20.35
Courts	6.73
Mental Health	6.20
Human Resources	4.65
Public Health	3.00
Public Safety	2.99
All Other	19.44

Medicaid pays for health services for various categories of the poor: children, mothers, pregnant women, the elderly, and the disabled.

In 2011, Alabama’s population was estimated at 4,876,660. Of this number 21.2% were eligible for Medicaid. And, 43.5% of the state’s children (those under 21) were Medicaid eligible.

## 6. What is the Alabama Trust Fund (ATF)?

See [Alabama State Treasury](#) website for more information.

The ATF was created as a depository for monies from offshore oil and gas leases and royalty payments based on production.

ATF assets are held in a perpetual trust and invested to generate income (revenue).

Money from the ATF is used to support the General Fund budget, for public improvements (state, county and municipal), land preservation and recreation, and rainy day emergency accounts for the General Fund and Education Trust Fund.

The Legislative Fiscal Office reported ATF’s September 2008 assets as \$3.2 billion. By September 2011 assets had dropped to \$2.8 billion. Rainy day fund transfers were made in 2008, 2009 and 2010. This year the amount is \$2.3 billion.

Assets in the ATF and amounts available for distribution are affected by oil and gas

revenues paid into the fund, interest and dividends earned on investments and an increase or decrease in the market value of the assets in which revenue has been invested such as stocks and bonds.

Current law provides for transfer to the General Fund of 90% of interest and dividend income, with the remainder (up to \$15 million) going to the Forever Wild trust. It also allows transfer from the ATF of 75% of realized and unrealized capital gains on certain ATF assets annually, with most of the money going to the General Fund. Thirty percent this amount goes to other trusts. The amendment proposes changing these distributions...

In the current fiscal year, an additional \$ 266.4 million was transferred to the General Fund as a result of Attorney General opinions that payments in previous years had not been calculated properly because oil and gas capital payments (royalties) paid into the fund for the relevant year had not been included in capital gains. Additional amounts were transferred to other trust accounts. In 2009 and 2010, the ATF sustained significant realized and unrealized capital losses from investments. In 2010 and 2011, there were again realized and unrealized capital gains from investments.

Distributions based on the currently authorized distribution formulas, withdrawal of rainy day funds, lower oil and natural gas revenues being paid into the fund and lower returns on investments have reduced the funds in the ATF. Over time, as oil and gas fields are depleted, revenues from royalties going into the fund will decrease.

The legislature has 10 years from the date of borrowing to repay withdrawn General Fund rainy day funds, but the funds for the repayments must also come from currently inadequate state revenues. Education Trust Fund rainy day withdrawals are required to be repaid within 6 years of borrowing. The amendment does not change these requirements.

Currently each time rainy day money for either the General Fund or Education Fund is taken from the ATF, an additional 25% of the amount withdrawn is paid to the County and Municipal Government Capital Improvement Trust fund. These added amounts are not required to be repaid. The amendment would eliminate these 25 percent transfers.

A new distribution formula created by the amendment is discussed in a later section.

## **7. What special money transfers to the General Fund are in the amendment?**

\$145.8 million would be moved from the Alabama Trust Fund to the State General Fund in each of the next three fiscal years beginning October 1, 2012 if the amendment passes. These monies are in addition to the money that would go into the General Fund from the ATF based on the regular distributions proposed in the amendment.

No Education Trust Fund monies are being transferred by this amendment.

## **8. What are the consequences of the money transfers on the Alabama Trust Fund if the amendment passes?**

The amendment does not require repayment of the monies transferred by this amendment. Previous emergency rainy day withdrawals from the ATF have been required to be repaid.

The three years of transfers would further reduce the value of the ATF which has already seen significant decline from its highest value. Declining oil and gas revenue has reduced amounts being paid into the ATF and investment gains in the ATF are uncertain. Rainy day borrowings reduce ATF investment assets and income for the period until they are repaid.

Recently, some legislators have announced that they plan to introduce legislation to require repayment of the transfers proposed in the amendment. The governor says he will support this move.

## **9. Why are special transfers to the General Fund for three years instead of one?**

The most frequently given explanations are:

1. It will take time to re-grow the economy and generate needed revenue.
2. Less than a three year period would not solve the financial problems related to the recession and current economic recovery rates.
3. In three years other solutions may be found. More than three years could needlessly further deplete the principal in the Alabama Trust Fund.
4. The additional transfers beyond this year may give the state more flexibility in responding to Federal health care mandates and related options.
5. The new Internet tax which would generate additional revenues cannot take effect until Congress acts.
6. Three years gets us past the 2014 state elections.

## **10. How does the amendment change existing distributions from the Alabama Trust Fund?**

Distribution formulas for the Alabama Trust Fund (ATF) are set by constitutional amendments. The current amendment changes these distributions by providing as follows:

### **The First Distribution**

Thirty-three (33) percent of the oil and gas capital payments into the Alabama Trust Fund

for the fiscal year prior to the distribution year plus five (5) percent of the average market value of invested assets of the ATF for the three years prior to the distribution year would be distributed annually as follows:

1. 10 percent to the County Government Capital Improvement Fund\*
2. 10 percent to the Municipal Government Capital Improvement Fund\*
3. 10 percent (but not more than \$15 million in any one fiscal year) to the Forever Wild Land Trust.\* Transfers would end September 30, 2032.

If the Forever Wild Amendment (Amendment 1) which is on the November 2012 ballot is not ratified, this provision would change. (See later discussion of Forever Wild.)

4. 1 percent (but not more than \$5 million) in any fiscal year to the Alabama Senior Citizens Trust Fund.\*
5. The remaining monies go into the State General Fund.

### **The Second Distribution**

Five (5) percent of the average market value of invested assets of the County and Municipal Government Capital Improvement Trust Fund calculated based on the three previous fiscal years will be equally divided and distributed annually to the County Government Capital Improvement Fund and the Municipal Government Capital Improvement Fund.

Current law providing for the distribution of ATF trust income (interest and dividends on investments) and realized and unrealized capital gains as well as some existing provisions relating to certain distributions to County and Municipal Government Capital Improvement Trust Funds are repealed. Existing law providing for certain distributions of oil and gas capital payments to capital improvement funds is not changed.

### **11. What are the likely impacts of the distribution changes on the Alabama Trust Fund and General Fund revenue?**

The Public Affairs Research Council of Alabama (PARCA) indicates the need for new distribution formulas was identified by a financial consultant. A consultant firm evaluated the amendment's distribution formulas and the new rules set by the amendment. The firm determined the changes improve the ATF's potential to maintain the value of the fund. Read [PARCA's analysis of the Sept. 18 amendment](#).

Analysis done by Alabama Arise Citizen Policy Project suggests that the yearly revenues from the ATF going into the General Fund for the next five years will change very little

with the new payout scheme but that the revenue stream would be more stable. Read [Arise's analysis of the Sept. 18 amendment](#).

Because the existing and proposed distribution procedures use formulas related to market values, interest income and oil and gas revenues, it is difficult to calculate precise impacts very far into the future.

Unless subsequently changed by another amendment, the new procedures if passed would continue to govern distributions from the ATF as long as it exists.

## **12. How do distribution changes and the amendment impact the Forever Wild Land Trust?**

Currently, the Forever Wild Land Trust receives 10 percent of trust income earned from the ATF.

If the amendment passes and the Forever Wild amendment to be voted on in November passes, 10 percent of the money distributed annually from the ATF under the new procedures proposed in the September amendment will go to the Forever Wild Land Trust. The distribution is limited to \$15 million per fiscal year.

The distributions to the Forever Wild Land Trust would end after September 30, 2032.

## **13. How do the November vote on the Forever Wild Land Trust (Amendment 1 on the November ballot) impacted this September amendment?**

If both the September and November amendments pass, the Forever Wild Land Trust would receive up to \$15 million from the ATF annually through September 30, 2032.

If the November amendment passes but the September amendment does not, the Forever Wild Land Trust would receive up to \$15 million from the ATF annually through September 30, 2032..

If the September amendment passes and the November Forever Wild amendment does not pass, the September amendment provides that 1% (up to \$1 million) of the money distributed from the ATF using the new formula will be paid to the Forever Wild Trust Stewardship Account.

If both the September and November amendments do not pass, funding for the Forever Wild Land Trust will end after September 30, 2012.

## **14. Are ATF assets protected in the amendment?**

As discussed above, the special transfers of money to the General Fund for the next three years are not required to be repaid. These amounts further deplete the ATF which has already seen large declines in its value.

Existing authorizations for distributions are based on trust performance for the previous year. Proposed new procedures provide additional discretion to the Trustees to reduce amounts paid from the ATF to protect the fund and also utilize a three year average to calculate the part of the distribution based on market value of the invested assets, which should reduce volatility.

The ATF Board is given the following authority to reduce the amount of future distributions:

. . . if market or financial conditions dictate that distributing the entire amounts authorized by this amendment would be detrimental to the preservation of the invested assets of the Alabama Trust Fund, the preservation of the invested assets of the County and Municipal Government Capital Improvement Trust Fund, or both, the Board of Trustees of the Alabama Trust Fund in its sole discretion may, by a two-thirds recorded vote of the entire membership of the Board, elect to distribute a smaller percentage of the oil and gas capital payments, a smaller percentage of the average amount of invested assets, or both to reduce these payouts set by the new distribution formulas each year if it finds a full payout would harm the fund. (SB147 Enrolled 2012, p. 4)

Board reductions must be made six months prior to the start of the fiscal year and therefore presumably would not affect distributions for the fiscal year beginning October 1, 2012.

If money is withdrawn from either the General Fund Rainy Day Account\* or the Education Trust Fund Rainy Day\* account:

1. No additional monies can be transferred to the County and Municipal Government Capital Improvement Fund\*
2. No monies earned from the repayments to either rainy day fund can be transferred to the General Fund.

An advisory committee is created for the County and Municipal Government Capital Improvement Fund. It will advise the ATF Board of Trustees.

### **15. What are the main consequences if the amendment passes?**

The General Fund Budget enacted in the 2012 Legislative Session will go into effect.

Proration would be avoided if revenue estimates are accurate.

The General Fund agencies will be funded at rates set in the budget.

Severe cuts in Medicaid and a resulting possible loss of Federal Medicaid dollars are avoided.

The other state agencies funded by the General Fund continue to operate at existing levels of service, which in some cases are already restricted levels.

If legislation is not passed to require replacement of the funds, the value of the ATF will be reduced by the amount of the specially transferred funds.

The Trustees will have greater flexibility to protect the assets of the ATF from depletion.

The new distribution procedure and formula may make distributions more stable and predictable making it easier to predict revenue available to the General Fund and to county and municipality capital improvement funds.

The new distribution procedure and formula may make the ATF less vulnerable to sudden, dramatic changes in investment markets.

It will be more likely that the legislature will be able to balance the budget for the succeeding two fiscal years without additional cuts to necessary spending or raising taxes.

## **16. What are the main consequences if the amendment does not pass?**

### **Severe Cuts in Services Provided by Agencies Covered by the General Fund**

Unless some way can be found to raise sufficient new revenue:

- Health care for virtually all Alabama citizens (not just those on Medicaid) would be adversely affected and health care for children, mothers, the aged and disabled will be severely impacted.
- Nursing home services will be severely impacted and might even close. Medicaid patients represent a larger percent of their aged and disabled patients.
- Some hospitals heavily dependent on Medicaid dollars could close, leaving serious gaps in health care availability in some areas.
- Cuts in prison system funds are likely to lead to layoffs and force early release of some prisoners.
- Prisons must maintain minimum standards set by the federal government that insure appropriate treatment of prisoners. If the levels are not maintained, lawsuits follow with one remedy to redress the problem being prisoner release.

- Mental health and public health services will be grossly underfunded.
- Some state government programs may end.
- Federal money for programs such as Medicaid may be greatly reduced. According to some sources, Alabama’s Medicaid program ranks at or near the bottom among the states in the services it provides; so there is not much room for additional cuts to services.
- If the state fails to deliver the minimum health care required by its Medicaid contract with the Federal government, the Federal government could threaten to discontinue its Medicaid funding to the state.

**Local Economic Impacts**

1. Cutting back on monies given to pay for medical services for those in Medicaid would impact city and county economies. The money goes to:

Hospitals	35.12%*
Nursing homes	17.96%
Waiver and community services	14.76%
Pharmacies	10.93%
Physicians	7.88%
Insurance companies	6.07%
Health Services	4.12%
Mental Health services	3.17%

\*FY2011 figures based on just over \$5 billion in spending.

2. Local economic slowdowns reduce consumer spending and facility spending and therefore sales tax collections which contribute to General Fund growth and to local and county government revenues. .)
3. Layoffs of state employees and health care workers (public and private) and the multiplier effects of millions of dollars less in the economy would increase unemployment and could further depress the economy.
4. Layoffs would be particularly devastating to communities where a government facility is a major employer.
5. If Federal Medicaid dollars were lost, it would be a very serious blow to the state economy.

## **The General Fund Budget Expenditures and Revenues Would Have To Be Balanced in the 12 Days between the Amendment Failing to Pass and the Start of the Fiscal Year.**

Major options that might be taken include the following:

1. Across The Board Proration Order from the Governor. Estimates for the cut percent generally are place at 15-20 percent.

Across the board cuts in General Fund monies allocated to agencies would likely result in: layoffs, service cuts, cuts in payments to private providers of services, and federal action (fund cuts, legal action) if federal mandates are not met for Medicaid and prisons.

2. Targeted Funding Cuts Aimed At Minimizing Medicaid And Prison System Cuts.

This has been a tactic used in recent years. Its continued use is limited as a result and could result in many of the same actions as proration with the addition of possible program eliminations.

3. Special Legislative Session To Raise New Revenue For The General Fund

The legislature might consider any of the following:

- Taxes that the legislature could raise without a constitutional amendment include “sin taxes” on such items as cigarettes and alcohol.
- It could further increase fees on nursing homes and other health providers but this might lead to their leaving Medicaid and other negative impacts on the public.
- Eliminate sales tax exemptions.
- Tax professional and other services not currently taxed.
- Eliminate earmarking of funds (for instance, funds going into the Education Trust Fund) but this would require a constitutional amendment(s).
- A constitutional amendment would also be required to eliminate the federal income tax exemption from the Alabama income tax.
- Create new taxes, user fees, etc.

*[Additional taxes seem unlikely given the legislature’s unwillingness to raise taxes and the restriction not to deal with taxes that it placed on the Constitutional Reform Commission it created.]*

#### 4. Special Legislative Session to Reallocate Existing Revenues

In the FY2011 revenues were shifted from some agencies to others and reserve funds taken from some agencies. There are limits on what can be done here in view of cuts that have already been made and the large percent of the General Fund budget that goes to Medicaid and prisons.

#### **Other Impacts**

Distributions from the ATF to the General Fund and other designated funds will continue to be made based on existing formulas and allocations. It has been suggested the existing distribution procedure is less stable and less predictable than the proposed new distribution procedure which is based on oil and gas payments and the ATF's three year average market value of invested assets.

Absent additional revenues, state services and the state's economy will continue to be adversely impacted for at least the next two years.

If both the September and November amendments do not pass, the Forever Wild Land Trust that preserves Alabama land for future generations and supports the recreation and tourist industries in the state will no longer be funded after September 30, 2012.

#### **17. Does the ATF Board of Trustees support the amendment?**

The Board has taken no position on the amendment. It has been reported that the Governor, who chairs the Board, has stated that he did not ask the Trustees to vote because he did not believe it was appropriate for the Board to take a position.

**SPECIAL CONSTITUTIONAL AMENDMENT ELECTION  
SEPTEMBER 18, 2012  
KEY TERMS**

**Following are key terms used in the proposed September 18, 2012 Alabama Constitutional Amendment proposition and the legislation that authorized the proposition.**

**Alabama Trust Fund (ATF)**

In 1984, the state received more than \$347 million from leases awarded on offshore tracts. In 1985, the voters of the state approved Amendment 450 creating the Alabama Trust Fund (ATF) as an irrevocable, permanent trust fund. The ATF was established to capture future revenues from sales of offshore drilling rights and from royalties on the resulting gas production.

**County and Municipal Government Capital Improvement Fund**

This fund is composed of the County Government Capital Improvement Fund and the Municipal Government Capital Improvement Fund.

**County Government Capital Improvement Fund**

Counties use monies from this fund for such capital improvements as the construction, maintenance and renovation of public buildings, solid waste facilities, public utilities, and roads and bridges. They may also use the money for bonds and warrants and for the operation and maintenance of county health departments and the county human resources department.

**Municipal Government Capital Improvement Fund**

Municipalities use these monies for capital improvements and renovations and to finance and/or retire bonds and warrants.

**Forever Wild Land Trust**

Approved in 1992 by Amendment 543 the Forever Wild Land Trust Fund is used to acquire, maintain, and protect unique lands and water areas within Alabama. Amendment 543 directed that trust income being reinvested in the ATF be paid to the Forever Wild Land Trust Fund.

**Proration**

Amendment 26 of the Alabama Constitution provides that no payment can be drawn on the State Treasury unless sufficient revenues are available. If sufficient funds are not available, the expenditure must be reduced (prorated) to the level of available revenues.

### **Rainy Day Accounts**

**Education Trust Fund** -- A 2002 amendment allows monies to be borrowed from the ATF with the purpose of minimizing proration due to falling tax revenues. During the recent recession and its aftermath, the borrowing limit was reached. Monies borrowed must be returned within six years.

**State General Fund** -- Functions like the ETF Rainy Day Account, but repayment must be done within ten years. During the recent recession and its aftermath, the borrowing limit was reached.