

1 SB367  
2 191849-1  
3 By Senator Hightower  
4 RFD: Finance and Taxation General Fund  
5 First Read: 06-MAR-18

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8 SYNOPSIS: Existing law requires the State Department  
9 of Finance to develop and maintain an inventory of  
10 all facilities and lands owned, leased, rented, or  
11 otherwise occupied and maintained by any agency of  
12 the state or the judicial branch. Existing law also  
13 provides procedures for the sale and lease of state  
14 owned property.

15 This bill would require all state agencies  
16 to self-report facilities and lands they own or  
17 lease to the State Department of Finance; would  
18 further provide for the sale or transfer of surplus  
19 lands; would provide for the distribution of  
20 proceeds from the sale of surplus lands to both the  
21 General Fund and the agency that owned or  
22 maintained the property; and would provide  
23 penalties.

24 Amendment 621 of the Constitution of Alabama  
25 of 1901, now appearing as Section 111.05 of the  
26 Official Recompilation of the Constitution of  
27 Alabama of 1901, as amended, prohibits a general

1 law whose purpose or effect would be to require a  
2 new or increased expenditure of local funds from  
3 becoming effective with regard to a local  
4 governmental entity without enactment by a 2/3 vote  
5 unless: it comes within one of a number of  
6 specified exceptions; it is approved by the  
7 affected entity; or the Legislature appropriates  
8 funds, or provides a local source of revenue, to  
9 the entity for the purpose.

10 The purpose or effect of this bill would be  
11 to require a new or increased expenditure of local  
12 funds within the meaning of the amendment. However,  
13 the bill does not require approval of a local  
14 governmental entity or enactment by a 2/3 vote to  
15 become effective because it comes within one of the  
16 specified exceptions contained in the amendment.

17  
18 A BILL  
19 TO BE ENTITLED  
20 AN ACT  
21

22 Relating to state-owned lands; to amend Sections  
23 9-15-70, 9-15-74, 9-15-75, 9-15-76, 9-15-80, 9-15-82, 9-15-83,  
24 9-15-84, and 41-4-18, Code of Alabama 1975; to require all  
25 state agencies to self-report lands they own or lease to the  
26 Department of Finance; to further provide for the sale or  
27 transfer of surplus lands; to provide for a distribution of

1 proceeds from the sale of surplus lands to both the General  
2 Fund and the agency that owned or maintained the property; to  
3 provide penalties; and in connection therewith would have as  
4 its purpose or effect the requirement of a new or increased  
5 expenditure of local funds within the meaning of Amendment 621  
6 of the Constitution of Alabama of 1901, now appearing as  
7 Section 111.05 of the Official ReCompilation of the  
8 Constitution of Alabama of 1901, as amended.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Sections 9-15-70, 9-15-74, 9-15-75,  
11 9-15-76, 9-15-80, 9-15-82, 9-15-83, 9-15-84, and 41-4-18, Code  
12 of Alabama 1975, are amended to read as follows:

13 "§9-15-70.

14 "This article applies to all real property and  
15 interests ~~therein~~ owned by the State of Alabama and the  
16 departments, boards, bureaus, commissions, institutions,  
17 corporations, and agencies of the state with the exception of  
18 those sales, transfers, and reversions set out in Section  
19 9-15-82. As used in this article, real property shall include  
20 land, lots, buildings or other structures, ~~and~~ all things and  
21 interests, including leasehold interests, ~~pertaining thereto~~,  
22 and all other things annexed or attached to the land which  
23 would pass to a vendee by conveyance of the land or lot,  
24 including mineral and gas and oil interests. The state has the  
25 right to reserve all or any part of the mineral, oil, or gas  
26 interests and also the right of ingress and egress ~~thereto~~ to  
27 the land.

1           "§9-15-74.

2           "(a) After obtaining an appraisal on the real  
3 property and consulting with the chief executive officer of  
4 the department, board, bureau, commission, institution,  
5 corporation, or agency which desires to sell or lease the real  
6 property, the Lands Division shall establish and publish the  
7 minimum amount for which the real property may be sold or  
8 leased. The determination to sell or lease the real property  
9 shall be made by the chief executive officer of the  
10 department, board, bureau, commission, institution,  
11 corporation, or agency desiring to sell or lease the real  
12 property with the approval of the Governor after giving due  
13 consideration to the results of the appraisal made upon the  
14 real property. With the approval of the Governor, the chief  
15 executive officer shall have the right to accept or reject all  
16 bids submitted for the purchase of the real property under  
17 these provisions. The chief executive officer and the Governor  
18 in consultation with the Director of the Lands Division of the  
19 state Department of Conservation and Natural Resources shall  
20 determine if the sale or lease of real property is to be by  
21 free and open competitive advertised public auction or  
22 advertised sealed bids.

23           "(b) For properties made available pursuant to  
24 Section 41-4-18, the Lands Division shall first provide notice  
25 of the availability of the property to other state agencies,  
26 and shall give priority to state agencies it determines to be  
27 in need of land. If no other state agency expresses an

1 interest in the property within 60 days, the Lands Division  
2 shall then advertise the availability of the property to the  
3 municipality or county in which it is located.

4 "(c) If a municipal agency or county government  
5 agency does not submit a bid for a property offered to it  
6 under subsection (b) within 60 days, then the Lands Division  
7 may advertise the property for sale publicly.

8 "§9-15-75.

9 "Every proposal to make a sale or lease under this  
10 article, other than those provided for by subsection (b) of  
11 Section 9-15-74, shall be advertised for at least once a week  
12 for four weeks in advance of the date fixed for receiving bids  
13 or public auction. The advertisement shall appear at least  
14 once a week for four consecutive weeks in a newspaper of  
15 general circulation in the county or counties where the  
16 property is located, and at least one time in three other  
17 newspapers of general circulation throughout the state.  
18 Property located outside the State of Alabama shall be  
19 advertised at least one time in three newspapers of general  
20 circulation throughout the state. A copy of the proposal shall  
21 simultaneously be posted on a readily accessible public  
22 bulletin board at the main office of the Lands Division of the  
23 state Department of Conservation and Natural Resources, as  
24 well as at the property itself. Persons who request  
25 notification of the sale or lease of real property by the  
26 state and who provide their mailing address or e-mail address  
27 with the Lands Division shall be sent notice of the sale or

1 lease. Advertisements for bids shall state the real property  
2 to be sold, by description, where the property is located, and  
3 the dates and times when the property may be inspected. The  
4 advertisements shall further state the date, time, and place  
5 of auction or opening of sealed bids. The advertisements shall  
6 state that all bids may be rejected by the state. No bid shall  
7 be received at any time after the time advertised.

8 "§9-15-76.

9 "Each person or corporation submitting a bid on real  
10 property or an interest therein to be sold or leased by the  
11 State of Alabama under this article shall present with his or  
12 her bid, payable to the Lands Division of the state Department  
13 of Conservation and Natural Resources, a certified check or  
14 bank cashier's check in the amount to be determined by the  
15 Lands Division not to exceed 20 percent of his or her bid, as  
16 a binder on the real property upon which he or she has bid. If  
17 the property is being sold at public auction, the Lands  
18 Division shall determine the amount of the binder required.  
19 The binder shall be forfeited by the person or corporation to  
20 whom the bid is awarded if the person or corporation does not  
21 complete purchase by presenting to the state a cashier's check  
22 or certified check for the amount due less the amount of the  
23 binder previously submitted on the real property within 30  
24 days after receiving notice in writing and by e-mail that he  
25 or she is the successful bidder. The binder shall be applied  
26 to the purchase price of the successful bid. The Director of  
27 the Lands Division for good cause shown may extend the period

1 for completing the sale for one additional period of seven  
2 days. Certified checks submitted as binders by those persons  
3 or corporations not awarded the bid shall be returned to the  
4 persons or corporations.

5 "§9-15-80.

6 "(a) Officers and employees of the department  
7 selling or leasing the real property and officers and  
8 employees of the Department of Conservation and Natural  
9 Resources, as well as members of their families, shall be  
10 excluded from bidding on the property at a public auction or  
11 by sealed bids.

12 "(b) It shall be unlawful for any individual to bid  
13 on or purchase property offered pursuant to this article for  
14 the benefit of any state employee or any relative of any state  
15 employee who is excluded from bidding on the property by this  
16 article. Violation of this subsection shall constitute a Class  
17 C misdemeanor.

18 "(c) Except as otherwise provided in subsection (a),  
19 ~~Other officers or employees of the state shall not be excluded~~  
20 ~~from bidding~~ may bid on or ~~purchasing~~ purchase the real  
21 property at public sale or sealed bid.

22 "§9-15-82.

23 "(a) ~~This~~ Except as otherwise provided in this  
24 article, this article shall not apply to the transfers of real  
25 property between departments, boards, bureaus, commissions,  
26 institutions, corporations, or agencies of the state. These  
27 transfers may be made by mutual agreements between the chief



1 executive officers of the respective departments with the  
2 approval of the Governor. This article shall not apply to any  
3 of the following:

4 "(1) the The leasing or sale of timber from unused  
5 lands under Section 9-15-1 et seq., ~~to~~

6 "(2) the The leasing or sale of timber from school  
7 lands and swamp and overflowed lands under Section 9-15-30 et  
8 seq. ~~to~~

9 "(3) to the The leasing of oil, gas, and other  
10 minerals under Section 9-17-60 et seq., ~~real~~

11 "(4) Real property sold by the Department of Revenue  
12 under tax sales and redemptions., ~~to the~~

13 "(5) The sale of property by the Alabama Historical  
14 Commission under Section 41-9-249(7)., ~~to reversions~~

15 "(6) Reversions made under Section 31-4-18., ~~to the~~

16 "(7) The sale or conveyance of real property by the  
17 Alabama Housing Finance Authority or the Alabama Mental Health  
18 Finance Authority., ~~to the~~

19 "(8) The sale or lease of any interest in real  
20 property owned for investment purposes by any trust fund  
21 administered by the Division of Risk Management., ~~or to~~  
22 property

23 "(9) Property traded in right of way negotiations or  
24 sales of excess right of way or uneconomic remnants by the  
25 State Department of Transportation.

26 "(b) Notwithstanding any other provisions of this  
27 article, and except as provided in Section 41-4-18, the

1 Alabama Forestry Commission shall have the authority to  
2 conduct real property sales in accordance with this article  
3 without going through the Lands Division. In so doing, the  
4 Alabama Forestry Commission shall comply with all other  
5 provisions of this article.

6 "(c) This article shall not apply to the granting of  
7 easements, rights-of-way for utilities, roads, streets, and  
8 sidewalks where there is no competitive market.

9 "(d) Notwithstanding any other provision of this  
10 article, institutions and systems of higher education with  
11 separately constituted boards of trustees, or those  
12 institutions of higher education subject to the supervision  
13 and authority of the State Board of Education that have  
14 written policies and procedures governing transfers of  
15 interest in real property, shall have the authority to conduct  
16 real property sales and leases by public auction or publicly  
17 sought sealed bid in accordance with procedures in the article  
18 for advertising and receiving bids, without going through the  
19 Lands Division of the state Department of Conservation and  
20 Natural Resources. ~~Furthermore, in those~~

21 "(e) In cases in which it can be economically  
22 justified and it is deemed to be in the best interest of the  
23 institution or system and the State of Alabama, an institution  
24 of higher education described in subsection (d) may ~~to~~ offer  
25 an interest in real property for sale or lease through a  
26 listing with a duly licensed real estate broker who shall  
27 publicize the offer in accordance with customary practices or

1 through negotiation after publicly announced requests for  
2 proposals to sell or lease the property are made, rather than  
3 through a procedure otherwise described in this article, ~~the~~  
4 ~~institution or system may do so, provided that a~~ if:

5 "(1) A written declaration setting forth the  
6 specific reasons why it is deemed to be in the best interest  
7 of the institution or system and the State of Alabama to make  
8 the specific sale or lease in question ~~in such manner~~ is made  
9 by an agent of the institution authorized by the board of  
10 trustees or the State Board of Education, ~~and subsequently.~~

11 "(2) That declaration is ratified by the board of  
12 trustees or the State Board of Education. ~~and the~~

13 "(3) The document ~~shall be~~ is retained and made a  
14 part of the permanent file and ~~shall be~~ is made open to public  
15 inspection.

16 "(f) Sales and leases transacted as described in  
17 this section shall be deemed to be in compliance with all  
18 provisions of this article. Ground leases and leases of  
19 facilities by institutions of higher education to social or  
20 professional organizations, faculty members, employees, or for  
21 institution-related purposes which are designed to enhance the  
22 operation of the institution and are declared to be in the  
23 best interest of the institution by the board of trustees or  
24 the State Board of Education, are exempt from the provisions  
25 of this article. ~~Such declaration shall be maintained as~~  
26 ~~aforsaid.~~

1           ~~"(b) Except as set out hereinafter, nothing herein~~  
2           ~~contained~~ (g) Except as otherwise provided in this article,  
3           this article shall not be construed to apply in any manner to  
4           the sale or lease of any real property or any interest therein  
5           owned in whole or in part by any county or municipal board of  
6           education, any county or municipal government or any of their  
7           respective boards, agencies, departments, corporations, or  
8           instrumentalities including corporations and/or boards in  
9           regard to which any county or municipal governing body is a  
10          determining or appointing authority.

11           ~~"Provided that nothing herein contained shall be~~  
12          ~~construed to apply in any manner to the sale or lease of any~~  
13          ~~real property or interest therein owned by the State of~~  
14          ~~Alabama and the departments, boards, bureaus, commissions,~~  
15          ~~instrumentalities, corporations, and agencies of the state to~~  
16          ~~the United States government, any county or municipal board of~~  
17          ~~education, any county or municipal governing body or any of~~  
18          ~~their respective boards, agencies, departments, corporations,~~  
19          ~~or instrumentalities including corporations and/or boards in~~  
20          ~~regard to which any county or municipal governing body is a~~  
21          ~~determining or appointing authority, subject to the condition~~  
22          ~~that such property or any interest therein is not resold,~~  
23          ~~leased, or otherwise transferred in whole or in part, within~~  
24          ~~three years, to any private person, firm, or corporation~~  
25          ~~without compliance with the provisions of this article.~~  
26          ~~Provided, however, that if the~~

1           "(h) If any state property sold to a municipal  
2 agency or county agency is to be sold by that municipal agency  
3 or county agency within three years from the date it was  
4 ~~acquired~~ purchased, the state shall have the right to  
5 repurchase the property at the price it was sold by the state.  
6 ~~Provided, further, that all such~~

7           "(i) All real property transactions between the  
8 United States government, any county or municipal board of  
9 education, any county or municipal government, or any of their  
10 respective boards, agencies, departments, corporations, or  
11 instrumentalities including corporations or boards and the  
12 state or any department, board, bureau, commissions,  
13 instrumentalities, corporations, and agencies of the state  
14 shall have the approval of the Governor and written notice of  
15 ~~such~~ the transaction shall be given to the Lands Division of  
16 the Department of Conservation and Natural Resources at least  
17 30 days before the closing of ~~such~~ the transaction.

18           "~~(c)~~ (j) Notwithstanding any other provision of this  
19 article, this article shall not apply to lease-leaseback  
20 transactions entered into by institutions and systems of  
21 higher education with separately constituted boards of  
22 trustees provided that ~~any such~~ the institution or system of  
23 higher education shall at all times remain the owner of any  
24 real property that is the subject of ~~any such~~ the  
25 lease-leaseback transaction.

26           "~~(d)~~ (k) Notwithstanding any other provision of this  
27 article, this section shall not apply to the sale, lease, or

1 transfer of any property owned by a municipal commercial  
2 development authority subject to Article 6, commencing with  
3 Section 11-54-170, of Chapter 54 of Title 11.

4 "§9-15-83.

5 "(a) Whenever any real property is sold or leased  
6 under this article, the proceeds from the sale, less the  
7 expenses of the sale or lease, shall be deposited to the  
8 credit of the fund of the state department, commission, board,  
9 bureau, institution, corporation, or agency which offered the  
10 real property for sale.

11 "(b) Whenever any real property is sold or leased  
12 under this article and pursuant to the requirements of Section  
13 41-4-18, the proceeds from the sale, less the expenses of the  
14 sale or lease, shall be divided evenly between the General  
15 Fund and the state department, commission, board, bureau,  
16 institution, corporation, or agency which owned, leased,  
17 rented, or otherwise occupied or maintained the property.

18 "§9-15-84.

19 "The Lands Division ~~is authorized to promulgate such~~  
20 ~~shall adopt any rules and regulations as may be necessary to~~  
21 ~~implement the provisions of this article~~ for implementing the  
22 requirements imposed by the act amending this section no later  
23 than 180 days after the effective date of the act.

24 "§41-4-18.

25 "(a) (1) The State Department of Finance shall  
26 develop and maintain an ~~automated~~ online inventory of all  
27 facilities and lands owned, leased, rented, or otherwise

1 occupied or maintained by any agency of the state or by the  
2 judicial branch, except for the following: ~~The facilities~~  
3 ~~inventory shall include the location, occupying agency, and~~  
4 ~~ownership.~~

5 "a. Tax-deeded land.

6 "b. Land held for highway purposes.

7 "c. Land that has escheated to the state.

8 "d. Land that has been distributed to the state by  
9 court decree in estates of deceased persons.

10 "(2) All state agencies shall self-report facilities  
11 and lands owned, leased, rented, or otherwise occupied or  
12 maintained by them to the State Department of Finance. The  
13 online inventory shall contain all of the information required  
14 in subdivision (6).

15 ~~"(2)(3)~~ (3) For the purposes of this section, the term  
16 facility means buildings, structures, and building systems,  
17 and does not include facilities of the State Department of  
18 Transportation or the Alabama State Port Authority.

19 ~~"(3)(4)~~ (4) The State Department of Transportation shall  
20 develop ~~and,~~ maintain, and make available to the public an  
21 online inventory of their its own facilities, which  
22 ~~inventories should be available to the public online and~~  
23 lands. The State Department of Transportation shall provide  
24 the department with all of the information contained in its  
25 inventory, and the State Department of Finance shall publish  
26 any updates to its online inventory as they occur.

1           "~~(4)~~(5) The Alabama Commission on Higher Education  
2 and the State Department of Postsecondary Education,  
3 respectively, shall develop and maintain a facilities  
4 inventory, in the manner prescribed by the State Department of  
5 Finance, of all state university and community college  
6 facilities ~~and~~, shall make the data available in a format  
7 acceptable to the State Department of Finance, and shall  
8 provide updates to the state Department of Finance. The  
9 department shall update its online inventory with information  
10 from the updates as soon as they are provided.

11           "~~(5)~~(6) ~~The lands inventory shall include the~~  
12 ~~location and ownership. All state agencies shall self-report~~  
13 the following information regarding facilities and lands  
14 owned, leased, rented, or otherwise occupied or maintained by  
15 them:

16           "a. The location of the property, including street  
17 address, city, and county.

18           "b. The size of the property, including its acreage.

19           "c. The date of acquisition of the property, if  
20 available.

21           "d. The manner in which the property was purchased  
22 and the purchase price, if available.

23           "e. A detailed description of the current uses of  
24 the property, and whether the property is fully utilized,  
25 partially utilized, or surplus.

26           "f. A detailed description of every lease, license,  
27 or other agreement relating to the use of the property.



1           "g. Any projected future uses of the property during  
2 the next five years, or detailed information regarding the  
3 need to continue ownership or management of the property.

4           "h. A concise description of each major structure  
5 located on the property.

6           "i. The estimated value of property declared surplus  
7 by the agency and real property where the agency has not  
8 identified a current or potential use.

9           "j. Any other property data the State Department of  
10 Finance requires by rule.

11           ~~"(6)(7)~~ The State Department of Finance shall  
12 utilize any available information from existing inventories of  
13 facilities and lands to develop, ~~and maintain,~~ and update the  
14 inventory as required by this section, including any  
15 information about state lands managed by the State Lands  
16 Division of the Department of Conservation and Natural  
17 Resources.

18           ~~"(7)(8)~~ This section shall not require the  
19 Retirement Systems of Alabama to disclose any lease of a  
20 facility between the Retirement Systems of Alabama as a lessor  
21 and any person or entity as a lessee. Notwithstanding the  
22 foregoing, any agency of the state or judicial branch shall  
23 disclose any lease of a facility between that entity as a  
24 lessee and the Retirement Systems of Alabama as a lessor.

25           "(b) The State Department of Finance shall update  
26 the ~~automated online inventory, and cause to be updated the~~  
27 ~~other inventories required by subsection (a), at least one~~

1 ~~time every 3 years. Notwithstanding the foregoing, the~~  
2 ~~inventories shall be updated~~ to reflect acquisitions of new  
3 facilities and lands and any other significant changes in  
4 existing facilities and lands as they occur. The State  
5 Department of Finance shall provide each agency and the  
6 judicial branch with the most recent inventory applicable to  
7 that agency or branch upon request. Each agency and branch, in  
8 the manner prescribed by the State Department of Finance,  
9 shall report significant changes in the inventory as they  
10 occur.

11 "(c) The ~~automated~~ inventory required by this  
12 section shall be maintained on the website of the State  
13 Department of Finance for access by the public.

14 "(d) All state agencies shall make a complete  
15 self-report of all facilities and lands owned, leased, rented,  
16 or otherwise occupied or maintained by them to the State  
17 Department of Finance no later than July 1, 2019. Failure to  
18 meet the deadline by any agency shall result in a one thousand  
19 dollar (\$1,000) fine to that agency. Each day a state agency  
20 fails to submit a complete report to the State Department of  
21 Finance beyond the deadline date shall result in an additional  
22 fine.

23 "(e) All state agencies shall self-report facilities  
24 and lands as accurately as possible. Any intentional omission,  
25 alteration, or fabrication of any aspect of a self-report of  
26 lands under this section by any agency shall result in a one  
27 thousand dollar (\$1,000) fine to that agency per occurrence.

1           "(f) If a state agency reports property owned by it  
2 to be surplus, and does not identify a projected use for the  
3 property for the next five years as required by subsection  
4 (a), the Department of Finance shall notify the Lands Division  
5 of the availability of the property for transfer of the  
6 property to another state agency, sale to a municipal agency  
7 or county agency, or sale to a private party or organization.  
8 Disposition of state property pursuant to this subdivision  
9 shall be effected pursuant to Article 3 of Chapter 15 of Title  
10 9.

11           "(g) Any sale or transfer of land under this section  
12 shall be conducted pursuant to Article 3 of Chapter 15 of  
13 Title 9.

14           "(h) The State Department of Finance shall adopt any  
15 rules necessary for implementing the requirements imposed by  
16 the act adding this subsection no later than 180 days after  
17 the effective date of the act."

18           Section 2. Although this bill would have as its  
19 purpose or effect the requirement of a new or increased  
20 expenditure of local funds, the bill is excluded from further  
21 requirements and application under Amendment 621, now  
22 appearing as Section 111.05 of the Official Recompilation of  
23 the Constitution of Alabama of 1901, as amended, because the  
24 bill defines a new crime or amends the definition of an  
25 existing crime.

1                   Section 3. This act shall become effective on the  
2 first day of the third month following its passage and  
3 approval by the Governor, or its otherwise becoming law.