

1 SB53
2 171252-1
3 By Senators Hightower, Albritton and Glover (Constitutional
4 Amendment)
5 RFD: Finance and Taxation General Fund
6 First Read: 05-AUG-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 and Mobile and Baldwin
11 County Settlement Trust Fund.

12 The proposed amendment would require the
13 Alabama Trust Fund Board of Trustees to administer
14 the Alabama Legacy Trust Fund and gives the
15 Legislature the authority to appropriate the Mobile
16 and Baldwin County Settlement Trust Fund.

17 The proposed amendment provides for the
18 distribution of certain payments received by the
19 state from settlements and other monies.

20 The proposed amendment also provides that
21 Legacy Trust Fund capital be held in perpetual
22 trust and provides for the distribution of Legacy
23 Trust Fund income.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

1
2 Proposing an amendment to the Constitution of
3 Alabama of 1901, to create the Alabama Legacy Trust Fund and
4 Mobile and Baldwin County Settlement Trust Fund; to provide
5 for the distribution of payments from settlements and other
6 monies; to provide for the holding of Legacy Trust Fund
7 capital in perpetual trust; and to provide for the
8 distribution of Legacy Trust Fund 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 part thereof, effective January 1, 2017,
13 following approval by a majority of the qualified electors
14 voting thereon in accordance with Sections 284, 285, and 287
15 of the Constitution of Alabama of 1901, appearing as Sections
16 284 and 285 of Official ReCompilation of the Constitution of
17 Alabama of 1901 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. Further, the Mobile and Baldwin County
24 Settlement Trust Fund is hereby created to be appropriated by
25 the Legislature for the benefit of Mobile and Baldwin Counties
26 and citizens thereof, funded in accordance with this
27 amendment.

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

3 (a) BOARD. The Board of Trustees of the Alabama
4 Trust Fund.

5 (b) DEEPWATER HORIZON OIL SPILL SETTLEMENT. Any
6 settlement of the Deepwater Horizon Oil Spill Disaster
7 associated with oil spill disaster in the Gulf of Mexico on
8 April 20, 2010, that is not otherwise dedicated under federal
9 law, settlement agreement, or court order.

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

12 (d) LEGACY TRUST FUND. The Alabama Legacy Trust Fund
13 designated for settlement proceeds, other than those
14 settlement proceeds designated for the Mobile and Baldwin
15 County Settlement Trust Fund.

16 (e) MOBILE AND BALDWIN COUNTY SETTLEMENT TRUST FUND.
17 The trust fund designated for certain Deepwater Horizon Oil
18 Spill Settlement proceeds for the benefit of Mobile and
19 Baldwin Counties and appropriated by the Legislature for the
20 benefit of Mobile and Baldwin Counties and citizens thereof.

21 (f) STATE. The State of Alabama.

22 (g) SETTLEMENT PROCEEDS. Any payment of \$2,000,000
23 or more received by the state or any agency of the state
24 pursuant to any court order or a negotiated settlement where
25 the state or agency thereof is a party. The term shall also
26 mean any payments that would have previously been distributed
27 pursuant to Section 36-15-4.2, Code of Alabama, 1975.

1 (h) TRUST CAPITAL. All assets of the Legacy Trust
2 Fund other than trust income.

3 (i) TRUSTEE. A member of the Board of Trustees of
4 the Alabama Trust Fund.

5 (j) TRUST INCOME. The net income received by the
6 state from the investment and reinvestment of assets of the
7 Legacy Trust Fund, determined in accordance with this
8 amendment.

9 Section III. Settlement proceeds from the Deepwater
10 Horizon Oil Spill Settlement shall be distributed as follows:

11 (a) Of the total sum of the settlement proceeds
12 received by the State of Alabama, fifty percent (50%) shall be
13 distributed to the Legacy Trust Fund and fifty percent (50%)
14 shall be distributed to the Mobile and Baldwin County
15 Settlement Trust Fund. The State Treasurer shall establish a
16 formula that assures the above distribution is maintained for
17 the full sum of settlement proceeds from the Deepwater Horizon
18 Oil Spill Settlement. The distribution of proceeds pursuant to
19 subsection (c) shall be adjusted in order to maintain equal
20 settlement proceeds received by each fund.

21 (b) Upon the receipt of the first sum of settlement
22 proceeds received by the state, the following distribution
23 shall be made:

24 (1) Seventy percent (70%) to the Alabama Legacy
25 Trust Fund; and

26 (2) Thirty percent (30%) to the Mobile and Baldwin
27 County Settlement Trust Fund.

1 (c) Following the first sum of settlement proceeds
2 received and distributed pursuant to subsection (b), any
3 subsequent payments of settlement proceeds shall be
4 distributed to the Alabama Legacy Trust Fund and Mobile and
5 Baldwin County Settlement Trust Fund pursuant to subsection
6 (a), ensuring an overall equal receipt of proceeds by each
7 fund.

8 Section IV. The Legacy Trust Fund shall be under the
9 management and control of the Board and all powers necessary
10 or appropriate for the management and control of the Legacy
11 Trust Fund shall be solely vested in the Board. All powers and
12 duties granted to the Board for the investment of monies in
13 the Alabama Trust Fund shall also apply to investment of
14 monies in the Legacy Trust Fund.

15 Section V. Relating to the Alabama Legacy Trust
16 Fund:

17 (a) Any settlement proceeds shall first be used to
18 repay the Alabama Trust Fund Rainy Day Account for the
19 \$161,565,874 transferred to the State General Fund in fiscal
20 year 2010 pursuant to Amendment 803 of the Constitution of
21 Alabama of 1901 and to repay the Alabama Trust Fund for the
22 \$437,390,829 transferred to the State General Fund over fiscal
23 years 2013, 2014 and 2015 pursuant to Amendment 856 of the
24 Constitution of Alabama of 1901. Any remaining settlement
25 proceeds not relating to the Deepwater Horizon Oil Spill
26 Settlement after said repayment, shall be deposited into the
27 Alabama Legacy Trust Fund.

1 (b) The Legacy Trust Fund shall be augmented by (1)
2 other moneys or assets as the Legislature may by law
3 appropriate and transfer to the Legacy Trust Fund as a
4 permanent part thereof; (2) other moneys or assets as may be
5 contributed to the Legacy Trust Fund from any source; and (3)
6 trust income reinvested in the Legacy Trust Fund as provided
7 in Section VI of this amendment.

8 Section VI. (a) Assets in the Legacy Trust Fund
9 shall be held in perpetual trust and shall not be appropriated
10 by the Legislature or expended or disbursed for any purpose
11 other than to acquire eligible investments in accordance with
12 this amendment. All eligible investments acquired, in whole or
13 in part, with moneys constituting part of the trust capital
14 shall to the extent of such moneys constitute part of the
15 trust capital. Beginning the first year the receipts are
16 deposited into the Legacy Trust Fund, five percent (5%) of the
17 market value of invested assets shall be used for
18 distribution. The first year after the receipts are deposited
19 into the Legacy Trust Fund, five percent (5%) of the average
20 of the market value of the initial investment and the prior
21 year's invested assets shall be used for distribution. The
22 second year after the receipts are deposited into the Legacy
23 Trust Fund, five percent (5%) of the average of the market
24 value of the initial investment and two prior year's invested
25 assets shall be used for distribution. Beginning the third
26 year after receipts are deposited into the Legacy Trust Fund,
27 and each fiscal year thereafter, five percent (5%) of the

1 average market value of invested assets of the Legacy Trust
2 Fund as of the end of the three fiscal years ending one, two,
3 and three years prior to the beginning of the fiscal year for
4 which the distribution is being made shall be used for
5 distribution. Distribution shall be as follows: Eighty percent
6 (80%) of five percent (5%) of the average market value
7 invested shall be transferred to the State General Fund, ten
8 percent (10%) shall be distributed to the Alabama Capital
9 Improvement Trust Fund as set out in Section 219.04 of the
10 Constitution of Alabama of 1901, (Amendment 666), and ten
11 percent (10%) shall remain in the Alabama Legacy Trust Fund.

12 (b) To the extent appropriate and not at the time
13 prohibited by law, the Board shall use the facilities of the
14 Office of the State Treasurer in the administration of the
15 Legacy Trust Fund, including, but not limited to, the keeping
16 of records, the management of bank accounts, the transfer of
17 funds, and the safekeeping of securities evidencing
18 investments.

19 (c) An annual audit of the Legacy Trust Fund shall
20 be performed for each fiscal year by the Department of
21 Examiners of Public Accounts, or, in the discretion of the
22 Board, by an independent certified public accounting firm. A
23 report of each audit shall be prepared in accordance with
24 applicable accounting principles. The Board shall prepare and
25 publicize financial and other information concerning the
26 Legacy Trust Fund as may be provided by law. In the absence of
27 any law directing the preparation and publication of reports,

1 the Board shall prepare or cause to be prepared and publicize,
2 within 30 days after the end of each quarterly period in each
3 fiscal year, a report containing all of the following:

4 (1) A statement of the trust capital then held in
5 the Legacy Trust Fund showing any changes since the last
6 quarterly report.

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

9 (3) A statement of the investments then held in the
10 Legacy Trust Fund including descriptions and respective
11 values.

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

14 (5) Any other information determined by the Board to
15 reflect a full and complete disclosure of the financial
16 operations of the Legacy Trust Fund.

17 Section VII. No trustee shall be personally liable
18 for any liability, loss, or expense suffered by the Legacy
19 Trust Fund unless the liability, loss, or expense results from
20 the willful misconduct or wrongdoing of the trustee.

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

26 Section IX. All laws or parts of laws in conflict
27 with this amendment are repealed, including, without

1 limitation, Section 36-15-4.2, Code of Alabama 1975, as
2 amended.

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

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

14 "Proposing an amendment to the Constitution of
15 Alabama of 1901, to create the Alabama Legacy Trust Fund and
16 Mobile and Baldwin County Settlement Trust Fund and to provide
17 for the distribution of all settlement proceeds by the state
18 to be deposited into the trust funds; and for the Legacy Trust
19 Fund to be held in perpetual trust for the benefit of the
20 State of Alabama and its citizens.

21 "Proposed by Act _____"

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

24 "Yes () No ()."