SB521

135728-1

By Senator Dial (Constitutional Amendment)

RFD: Finance and Taxation General Fund

First Read: 17-APR-12
SYNOPSIS: This bill would propose an amendment to the Constitution of Alabama of 1901, to amend Amendment 803 of the Constitution of Alabama of 1901, now appearing as Section 260.02 of the Official Recompilation of the Constitution of Alabama 1901, as amended, to repeal the Education Trust Fund Rainy Day Account within the Alabama Trust Fund and provide that prior withdrawals from this Account shall be not replenished.

A BILL
TO BE ENTITLED
AN ACT

Proposing an amendment to the Constitution of Alabama of 1901, to Amendment 803 of the Constitution of Alabama 1901, now appearing as Section 260.02 of the Official Recompilation of the Constitution of Alabama 1901, as amended, to repeal the Education Trust Fund Rainy Day Account within
the Alabama Trust Fund and provide that prior withdrawals from
this Account shall be not replenished.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

PROPOSED AMENDMENT

AMENDMENT OF AMENDMENT 803

"Section I. Amendment 709 to the Constitution of
Alabama of 1901, now appearing as Section 260.01 of the
Official Recompilation of the Constitution of 1901, as
amended, is hereby repealed.

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

"Alabama Trust Fund" means the irrevocable,
permanent trust fund created by Amendment No. 450 to the
Constitution of Alabama of 1901, now appearing as Section
219.02 of the Official Recompilation of the Constitution of
Alabama of 1901, as amended.
"Education Trust Fund Rainy Day Account" or "General Fund Rainy Day Account" means the special accounts created by this amendment.

"Oil and Gas Capital Payment" means any payment (including any royalty payment) received by the state or any agency or instrumentality thereof as all or part of the consideration for the sale, leasing, or other disposition by the state or any agency or instrumentality thereof of any right to explore and drill for or to produce oil, gas, or other hydrocarbon minerals in any area on the water side of the high water mark of Mobile Bay or in any other offshore area and shall include any revenue by the state from federal oil and gas leases of the coast of Alabama. Any royalty or other payment, with the exception of any taxes heretofore or hereafter levied, that is based upon or determined with respect to the production of oil, gas or other hydrocarbon minerals and this is paid to the state or any agency or instrumentality thereof, regardless of the time of such payment, shall be considered an oil and gas capital payment.

Section III. (a) Within thirty days following ratification of this constitutional amendment there shall be created with the Alabama Trust Fund the Education Trust Fund Rainy Day Account and the General Fund Rainy Day Account. In any year in which the Governor certifies to the state comptroller and notifies the Legislature that proration would occur in appropriations from the Education Trust Fund or the State General Fund, the Education Trust Fund Rainy Day Account
the General Fund Rainy Day Account shall be credited with Oil and Gas Payments previously transferred into the Alabama Trust Fund in the amount required to fund withdrawals from the Account of the amounts authorized by this section. However, the amount withdrawn from the Education Trust Fund Rainy Day Account in a fiscal year may not exceed six and one half percent of the previous fiscal year's Education Trust Fund appropriation less the total amount of any prior years' withdrawals from the Account which have not been repaid to the Account, as provided for in subsection (b), (c), and (e). The amount withdrawn from the General Fund Rainy Day Account in a fiscal year may not exceed ten percent of the previous fiscal year's General Fund appropriations less the total amount of any prior years' withdrawals from the Account which have not been repaid to the Account, as provided for in subsection (b), (c), and (e). Funds from the Education Trust Fund or the General Fund Rainy Day Account may be withdrawn only to prevent proration of the appropriations from the Education Trust Fund or the General Fund. For the fiscal year beginning October 1, 2008, withdrawals shall be limited to an amount necessary to reach the highest estimated available revenue for each Fund as certified by the Finance Director and the Legislative Fiscal Officer prior to the end of the 2008 Regular Legislative Session. Beginning in the fiscal year beginning October 1, 2009, withdrawals from the Education Trust Fund Rainy Day Account and the General Fund Rainy Day Account shall be limited to an amount necessary to reach the
average of the estimated available revenue for each the Fund which is to be certified by the Finance Director and the Legislative Fiscal Officer prior to the third legislative day of each Regular Session. The Governor shall certify to the state comptroller and notify the Legislature that proration would occur in appropriations from the Education Trust Fund or the General Fund in accordance with this constitution. Upon the certification by the Governor, and after all other sources available to be used to offset proration have been utilized, withdrawals from the Education Trust Fund Rainy Day Account or the General Fund Rainy Day Account may be made; however, withdrawals shall be limited to the amount of the anticipated proration and funds allotted only to the extent necessary to avoid proration appropriations from the Education Trust Fund or the General Fund as limited by this section. In the event funds are withdrawn from the Education Trust Fund or the General Fund Rainy Day Account an additional amount equal to twenty-five percent of the Education Trust Fund or the General Fund transfer amount shall be transferred from the Alabama Trust fund to the County and Municipal Government Capital Improvement Fund.

(b) The Finance Director shall ensure that if during the fiscal year, receipts to the Education Trust Fund or the General Fund (net of the Education Trust Fund or the General Fund Rainy Day Account payments) are sufficient to reduce anticipated proration which has been certified by the Governor to the state comptroller and for which funds have been
withdrawn, then the amount corresponding to the reduced anticipated proration percentage shall be transferred back to the Education Trust Fund or the General Fund Rainy Day Account within the Alabama Trust Fund within thirty days after the end of the fiscal year in which the withdrawals were made. Any amount transferred back to the Education Trust Fund or the General Fund Rainy Day Account shall necessitate a transfer of an additional amount equal to twenty-five percent of that amount from the County and Municipal Government Capital Improvement Fund into the Education Trust Fund or the General Fund Rainy Day Account within the Alabama Trust Fund.

(c) The Legislature may provide by statute for the replenishment of the Education Trust Fund or the General Fund Rainy Day Account within the Alabama Trust Fund from sources other than the Alabama Trust Fund or Oil and Gas Capital Payments. The earnings from the investment of funds due to the replenishment shall be deposited into the State General Fund.

(d) The allocations to the Alabama Capital Improvement Trust Fund and to the County and Municipal Government Capital Improvement Fund as provided in Amendment 666 to the Constitution of Alabama of 1901, now appearing as Section 219.04 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, shall not be diminished by the application of this amendment.

(e) The Legislature must replenish the accounts within six (6) years after withdrawal of any funds from the Education Trust Fund Rainy Day Account and within ten (10)
years after withdrawal of any funds from the General Fund Rainy Day Account pursuant to the provisions of this amendment. After the complete replenishment of the Education Trust Fund or the General Fund Rainy Day Account, any excess funds shall be designated to repay any lost interest earnings to the trust established under Amendment 543 to the Constitution of Alabama of 1901, now appearing as Section 219.07 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, due to any withdrawal from the Education Trust Fund or the General Fund Rainy Day Account.

(f) The Legislature shall not be required to repay any amounts withdrawn from the Education Trust Fund Rainy Day Account prior to the ratification of this amendment."

Section 2. An election upon the proposed amendment shall be held in accordance with Sections 284, 285 and 287 of the Constitution of Alabama of 1901, now appearing as Sections 284, 285 and 287 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, and the election laws of this state.

Section 3. The appropriate election official shall assign a ballot number for the proposed constitutional amendment on the election ballot and shall set forth the following description of the substance or subject matter of the proposed constitutional amendment: "Proposing an amendment to the Constitution of Alabama of 1901, to amend Amendment 803 to the Constitution of Alabama of 1901; now appearing as Section 260.02 of the Official Recompilation of the
Constitution of Alabama of 1901, as amended, to repeal the Education Trust Fund Rainy Day Account within the Alabama Trust Fund; and to provide that prior withdrawals from this Account shall not be replenished.

"Proposed by Act ________." This description shall be followed by the following language:

"Yes ( ) No ( )."