

## ALABAMA TRUST FUND (ATF)

### AMENDMENT 450 RATIFIED

#### **Alabama Trust Fund.**

Section 1. For the continuing benefit of the state of Alabama and the citizens thereof, there is hereby created an irrevocable, permanent trust fund named "the Alabama trust fund" which shall be funded and administered in accordance with the provisions of this amendment.

Section 2. As used in this amendment, the following words and phrases shall have the following respective meanings:

"BOARD" means the board of trustees of the trust fund.

"ELIGIBLE INVESTMENTS" means any of the following:

(1) Demand deposits (interest bearing) in federally insured banks and interest bearing deposits (whether or not evidenced by certificates of deposit) in federally insured banks; provided, however, that said deposits plus interest shall be fully secured by obligations described in subdivisions (2) and (3) of this definition, to the extent that said deposits plus interest exceed insurance available from the Federal Deposit Insurance Corporation or from any agency of the United States of America that may succeed to the functions of the Federal Deposit Insurance Corporation;

(2) Bonds, notes and other evidences of indebtedness that are direct obligations of the United States of America or that are unconditionally guaranteed as to both principal and interest by the United States of America;

(3) Bonds, debentures, notes or other evidences of indebtedness issued or guaranteed by any federal agencies or government-sponsored enterprises authorized to issue their own debt instruments, including, without limitation to, the following: Federal Farm Credit Bank, Federal Intermediate Credit Banks, the Export-Import Bank of the United States, Federal Land Banks, the Federal National Mortgage Association, the Tennessee Valley Authority, the Governmental National Mortgage Association, the Federal Financing Bank, Federal Banks for Cooperatives, Federal Home Loan Banks, Federal Home and Loan Mortgage Association or the Farmers Home Administration;

(4) Repurchase agreements with federally insured banks or with government bond dealers reporting to and trading with the Federal Reserve Bank of New York, provided that such repurchase agreements are secured by obligations described in subdivisions (2) and (3) of this definition; and

(5) Interest bearing time deposits (whether or not evidenced by certificates of deposit) in savings and loan associations (a) the deposits of which are insured to the maximum extent possible by the Federal Savings and Loan Insurance Corporation or any agency of the United States of America that may succeed to its functions and (b) the principal office of which is located in the

state; provided, however, that said deposits plus interest shall be secured by obligations described in subdivisions (2) and (3) of this definition, to the extent that said deposits plus interest exceed insurance available from the Federal Savings and Loan Insurance Corporation or from any agency of the United States of America that may succeed to the functions of the Federal Savings and Loan Insurance Corporation;

(6) Corporate securities, provided, however, that no more than a maximum of 25 percent of the trust capital may be invested in such securities by the Board at any time and provided further that no more than a maximum of one percent of the 25 percent may be invested in any one corporation. The legislature may provide authorization to the Board to invest up to a maximum of 40 percent in corporate securities by a three-fifths vote of the membership of both the house of representatives and the senate. All corporate securities shall at the time of purchase by the Board carry a rating of "A" or better by Moody's and/or Standard and Poors; provided, however, that if neither Moody's nor Standard and Poors is in existence or ceases to issue bond ratings, then, in that event, otherwise eligible corporate securities must carry one of the three highest grade or quality ratings issued by the securities rating firm that, in the opinion of the Board, is recognized as the most reputable.

"FEDERALLY INSURED BANK" means any bank which has its principal office located in Alabama, whether organized under the laws of the United States of America or the laws of this state, and which is a member of the Federal Deposit Insurance Corporation or which obtains deposit insurance to the maximum extent possible from any agency of the United States of America that may succeed to the functions of the Federal Deposit Insurance Corporation.

"FISCAL YEAR" means the fiscal year of the state as may from time to time be provided by law.

"OIL AND GAS CAPITAL PAYMENT" means any payment (including any royalty payment) received after August 1, 1984, 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 off 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 that 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.

"STATE" means the state of Alabama.

"TRUST CAPITAL" means all assets of the trust fund other than trust income.

"TRUST FUND" means "the Alabama trust fund" created by this amendment.

"TRUST INCOME" means the net income received by the state, subsequent to the transfer of the initial trust capital by the state treasurer to the board, from the investment and reinvestment of all assets of the trust fund, determined in accordance with the provisions of this amendment.

"TRUSTEE" means a member of the board of trustees of the trust fund.

Section 3. (a) The trust fund shall be under the management and control of the board, and all powers necessary or appropriate for the management and control of the trust fund shall be vested solely in the board. The board shall have a membership of nine trustees consisting of the governor, the state treasurer, the director of finance (or such other official as may by law succeed to the responsibilities of the director of finance), three trustees appointed by the governor, two trustees appointed by the lieutenant governor, and one trustee appointed by the speaker of the house of representatives. The governor, the state treasurer and the director of finance shall each serve as a trustee ex officio, and the service of each such official as a trustee shall begin and end concurrently with the beginning and end of his or her tenure in such office. As promptly as practicable after the effective date of this amendment, the other trustees shall be appointed for the following initial terms: The trustees to be appointed by the governor shall be appointed for terms beginning immediately upon their respective appointments and ending at noon on October 1, in the first, second and third calendar years, respectively, next following the calendar year in which this amendment shall become effective; the trustees to be appointed by the lieutenant governor shall be appointed for terms beginning immediately upon their respective appointments and ending at noon on October 1, in the fourth and fifth calendar years, respectively, next following the calendar year in which this amendment shall become effective; and the trustee to be appointed by the speaker of the house of representatives shall be appointed for a term beginning immediately upon his or her appointment and ending at noon on October 1, in the sixth calendar year next following the calendar year in which this amendment shall become effective. Thereafter, the term of office of each appointed trustee shall be six years, commencing at noon on October 1 on which the term of the immediate predecessor trustee shall end.

(b) If at any time there shall be a vacancy among the appointed trustees, a successor trustee shall be appointed to serve for the unexpired term applicable to such vacancy. The appointment of each appointed trustee (other than those initially appointed), whether for a full six-year term or to complete an unexpired term, shall be made by the same officer of the state who appointed the trustee whose term shall have expired or is to expire or in whose position on the board a vacancy otherwise exists and shall be made not earlier than 30 days prior to the date on which such trustee is to take office as such. Each appointed trustee shall hold office from the effective date of his or her appointment by and with the consent of the senate and shall hold office until his or her successor is appointed as provided for herein. Trustees shall be eligible for reappointment without limit as to the number of terms previously served.

(c) At the beginning of each session of the legislature the governor shall certify to the senate for confirmation the names of all who shall have been appointed as trustees since the commencement of the last session of the legislature.

(d) Each appointed trustee shall, at the time of his or her appointment and at all times during his or her term of office, be a qualified elector of the state, and a failure by any trustee to remain so qualified during such term shall cause a vacancy of the office of such trustee. Each appointed trustee shall have recognized competence and experience in the evaluation and management of investments. Any appointed trustee may be impeached and removed from office as a trustee in the same manner and on the same grounds provided in section 174 of the Constitution of Alabama of 1901, or successor provision thereof, and the general laws of the state for impeachment and removal of the officers of the state subject to said section 174 or successor provision thereof. The governor, the state treasurer and the director of finance may not be impeached and removed from office as trustees apart from their impeachment and removal from the respective offices by virtue of which, ex officio, they serve as trustees.

(e) The governor, the state treasurer and the director of finance shall be entitled to vote, and shall perform the duties of trustees, ex officio, without any compensation other than that to which they are respectively entitled as governor, state treasurer and director of finance. Appointed trustees shall be entitled to such compensation for their services as may from time to time be provided by law duly enacted by the legislature, but the power to provide compensation of appointed trustees shall be discretionary with the legislature and nothing in this amendment shall be construed to confer upon such trustees an absolute right to any compensation for their services. Each trustee shall be reimbursed for expenses actually incurred in the performance of his or her duties as a trustee.

(f) A majority of the trustees shall constitute a quorum for the transaction of business by the board, and decisions shall be made on the basis of a majority of the quorum then present and voting, with each trustee to have a single vote. No vacancy in the membership of the board or the voluntary disqualification or abstention of any trustee shall impair the right of a quorum to exercise all of the powers and duties of the board. The governor shall be the chairman and presiding officer of the board. The director of finance shall be vice chairman, and the state treasurer shall serve as secretary. The board may appoint such other officers to perform such duties, not inconsistent with the provisions of this amendment or applicable law, as the board shall deem necessary or appropriate. In addition to such regular meetings of the board as may be provided by law or by bylaws or rules duly adopted by the board, special meetings of the board may be called by the governor acting alone or by any three other trustees acting in concert, in each case upon two days' notice to each trustee given in person or by registered letter or telegram; provided, however, that such notice to each trustee may be waived by such trustee, either before or after the meeting with respect to which such notice would otherwise be required. Any meeting held by the board for any purpose shall be open to the public, except that executive sessions may be held by the board when the character or good name of a person is involved. All proceedings of the board, except executive sessions, shall be reduced to writing on behalf of the board and maintained in the permanent records of the board, a copy of which shall be filed in the principal office of the board and shall be open for public inspection there during regular business hours. The principal office of the board shall be the principal office of the director of finance.

(g) No trustee shall vote on or participate in the discussion or consideration of any matter coming before the board in which such trustee, personally or through family connections or business associations, has any direct or indirect pecuniary interest, including, but without limitation thereto, decisions of the board concerning the investment of moneys constituting part of the trust fund in any deposit or obligation of any bank or corporation in which such trustee may have such an interest. If there shall be brought before the board any matter in which a trustee shall have any interest which may conflict with his or her duties as a trustee, he or she shall immediately make a complete disclosure to the board of such interest and shall thereafter withdraw from participation in any deliberation and decision of the board with respect to such matter.

(h) The board shall have all of the powers necessary to carry out and effectuate the purposes and provisions of this amendment, including, without limiting the generality of the foregoing, the following powers:

(1) To adopt, alter and repeal bylaws, regulations and rules for the regulation and conduct of its affairs and business;

(2) To make, enter into and execute contracts, agreements and other instruments and to take such other actions as may be necessary or convenient to accomplish any purpose for which the trust fund was created or to exercise any power expressly, or by reasonable implication, granted by this amendment;

(3) To enter into contracts with, to accept aid and grants from, to cooperate with and to do any and all things that may be necessary in order to avail itself of the aid and cooperation of the United States of America, the state or any agency, instrumentality or political subdivision of either thereof in furtherance of the purposes of this amendment; and

(4) To appoint, employ and contract with such employees, agents, advisors and consultants, including, but not limited to, attorneys, accountants, financial experts and such other advisors, consultants and agents as may in its judgment be necessary or desirable, and to fix their compensation; provided, however, that any obligation created or assumed by the board shall not create any pecuniary obligation or liability of the state or the trust fund other than such as shall be payable out of moneys appropriated by the legislature to defray the expenses of the board in carrying out the purposes of this amendment. No lien or charge against any assets of the trust fund for any purpose whatsoever shall be created by or result from any law enacted by the legislature or any action taken by the board or any other department, agency or instrumentality of the state.

(i) The expenses of making and disposing of investments, such as brokerage commissions, legal expenses referable to a particular transaction, transfer taxes and other customary transactional expenses shall be payable out of any trust income of the trust fund. The legislature shall provide for the administrative and other necessary expenses of the board in the same manner as it provides for the expenses of operating other departments and agencies of the state.

Section 4. (a) There shall be transferred from the general fund of the state into the trust fund, as the initial trust capital, moneys in an amount equal to the sum of all proceeds of any oil and gas capital payments received by the state pursuant to the sealed bids awarded on August 14, 1984, including any revenues and earnings deposited in any fund pursuant to section 9-17-68, Code of Alabama 1975; provided, however, that the division of lands of the department of conservation and natural resources shall be entitled to four percent of the \$347,483,000 which has been received by the state pursuant to the sealed bids awarded on August 14, 1984, which sum shall be carried in the state treasury to the credit of the state lands fund.

Promptly following the effective date of this amendment, the state treasurer shall take all actions necessary to transfer to the board the possession, control and management of the initial trust capital. If at the time of such transfer into the trust fund all or part of the initial trust capital is invested in certificates of deposit or other investments which cannot be converted into cash prior to the maturity thereof without loss of interest or other penalty, the state treasurer shall directly transfer such certificates of deposit or other investments to the board as part of the initial trust capital without first converting the same into cash. In the event that any certificates of deposit or other investments shall be transferred into the trust fund, the initial trust capital shall not include the income or profit from such certificates of deposit or other investments that has been received by the state on or before such transfer or that constitutes accrued interest, amortized discount or other amounts which in accordance with generally accepted accounting principles, should be considered as having been earned by the state as of the date of such transfer. Any such income or profits from such certificates of deposit or other investments that has been

received by the state on or before such transfer shall remain in the general fund subject to appropriation by the legislature. To the extent that any income or profit derived from such certificates of deposits or other investments is referable to any period after the transfer thereof into the trust fund, such income or profit shall not constitute trust capital nor trust income but shall remain in the general fund subject to appropriation by the legislature.

(b) The trust capital shall be augmented by (i) such other moneys or assets as the legislature may by law appropriate and transfer to the trust fund as a permanent part thereof; (ii) such other moneys or assets as may be contributed to the trust fund from any source; and (iii) all proceeds of any oil and gas capital payments as defined in this amendment subsequent to August 14, 1984; provided, however, that the division of lands of the department of conservation and natural resources shall be entitled to one percent of all proceeds of any oil and gas capital payments as defined in this amendment subsequent to August 14, 1984, which sum shall be carried in the state treasury to the credit of the state lands fund. In addition, within 90 days after September 1, 2001, the board of trustees of the Alabama heritage trust fund shall transfer the trust capital of the Alabama heritage trust fund to the Alabama trust fund and shall transfer the trust income of the Alabama heritage trust fund to the state general fund. The trust capital received by the Alabama trust fund from the Alabama heritage trust fund shall thereafter be trust capital of the Alabama trust fund. The Alabama heritage trust fund, the board of trustees of the Alabama heritage trust fund, and all other aspects of the Alabama heritage trust fund shall terminate and dissolve 90 days after September 1, 2001.

(c) Provided, however, beginning with state fiscal year 1989-90, one percent of the income from the Alabama trust fund shall be reinvested in the Alabama trust fund; two percent of such income shall be reinvested in the following year; and one additional percent of such income each subsequent year shall be reinvested until a total of 10 percent of such income from the Alabama trust fund each year shall be reinvested in the Alabama trust fund.

Section 5. (a) The trust capital shall be held in perpetual trust and shall not be appropriated by the legislature or expended or disbursed for any purpose other than to acquire eligible investments in accordance with the provisions of this amendment. All eligible investments acquired, in whole or in part, with moneys constituting part of the trust capital shall to the extent of such moneys constitute part of the trust capital, but any trust income derived therefrom shall be paid directly into the general fund as it is received by the board, subject to appropriation and withdrawal by the legislature.

(b) To the extent practicable, the board shall keep all moneys at any time held in the trust fund invested in such eligible investments as shall, in its sole and uncontrolled judgment, produce the greatest trust income over the term of such investments while preserving the trust capital. In making any investment of moneys held in the trust fund, the board shall exercise the judgment and care, under the circumstances prevailing at the time of such investment, which an institutional investor of the highest standard of prudence, intelligence and financial expertise would exercise in the management and investment of large assets entrusted to it not for the purpose of speculative profit but for the permanent generation and disposition of funds, considering the probable safety of capital as well as the expected amount and frequency of income. The board shall have full power and authority to select the eligible investments in which moneys held in the trust fund shall at any time be invested, and, to the extent not inconsistent with any express provision of this amendment, the eligible investments so selected shall be acquired from such issuers, underwriters, brokers or other sellers on such terms and conditions; shall be acquired for purchase prices reflecting such discount below or premium above the par

or face amount thereof; shall bear such dates and be in such form, denominations and series; shall mature or be subject to mandatory redemption on such dates; shall bear interest at such rate or rates payable at such intervals or, alternatively, shall provide income to the holder thereof in such manner (including, without limitation thereto, the purchase of such investments at a discount which represents all or part of the income or profit derived therefrom); shall be unsecured or secured in such manner and subject to the provisions of Section 2, paragraphs 2 and 3; shall contain such provisions for prepayment or redemption at the option of the issuer or obligor; and shall contain or be subject to such other provisions as shall, in all of the foregoing respects, be determined by the board in exercise of its sole and uncontrolled judgment. The board shall have full power and authority to invest the trust capital in any eligible investments producing trust income in accordance with such schedule as the board shall, in the exercise of its sole and uncontrolled judgment, determine to be in the best interests of the state, and in determining such schedule the board may emphasize future benefits in preference to near-term needs. The board shall have complete and uncontrolled discretion in making decisions as to when moneys in the trust fund shall be invested, as to the purchase price or other acquisition cost to be paid or incurred in acquiring investments for the trust fund, as to when investments constituting part of the trust fund shall be sold, liquidated or otherwise disposed of, and, as to the amount and nature of the price or other consideration to be received by the trust fund upon the sale, liquidation or other disposition of investments constituting part of the trust fund. No law shall be enacted nor any action taken by the executive department of the state which impairs or interferes with the power, authority and discretion conferred upon the board by this amendment with respect to the acquisition, management, control and disposition of investments at any time constituting part of the trust fund.

(c) To the extent appropriate and not at the time prohibited by law, the board shall use the facilities of the state treasurer in the administration of the trust fund, including, but without limitation thereto, the keeping of records, the management of bank accounts, the transfer of funds and the safekeeping of securities evidencing investments.

(d) The board shall cause an annual audit of the trust fund to be performed for each fiscal year by the state examiners of public accounts or, in the discretion of the board, by an independent certified public accounting firm and shall cause a report of such audit to be prepared in accordance with applicable accounting principles. The board shall cause to be prepared and publicized such financial and other information concerning the trust fund as may from time to time be provided by law duly enacted by the legislature, but in the absence of any law directing the preparation and publication of different reports, the board shall cause to be prepared and made public, within 30 days after the end of each quarterly period in each fiscal year, a report containing (i) a statement of the trust capital then held in the trust fund showing any changes thereto since the last quarterly report, (ii) a statement of the trust income received during the quarterly period in question, (iii) a statement of the investments then held in the trust fund including descriptions thereof and the respective values thereof, (iv) a statement of the trust income received to date during the current fiscal year, and (v) any other information determined by the board to reflect a full and complete disclosure of the financial operations of the fund.

Section 6. An individual trustee shall not in any way be personally liable for any liability, loss or expense suffered by the trust fund unless such liability, loss or expense arises out of or results from the willful misconduct or wrongdoing of such trustee.

Section 7. This amendment shall be self-executing, but the legislature shall have the right and power to enact laws supplemental to this amendment and in furtherance of the purposes and

objectives thereof, provided that such laws are not inconsistent with the express provisions of this amendment.

### **AMENDMENT 488 RATIFIED**

#### **Investment of Capital and Income from Alabama Heritage Trust Fund or Alabama Trust Fund.**

Any other provision of this Constitution to the contrary notwithstanding, trust capital and trust income held in either the Alabama heritage trust fund or the Alabama trust fund may be invested in such kinds of investments and in accordance with such conditions as shall from time to time be authorized by law for the investment of any of the trust funds of either the teachers' retirement system of Alabama or the employees' retirement system of Alabama; provided, however, that if any restrictive conditions at any time made applicable by law to either the teachers' retirement system of Alabama or the employees' retirement system of Alabama should prohibit investments that would otherwise be permitted for the Alabama trust fund by Amendment No. 450 to the Constitution of Alabama of 1901, then, notwithstanding the restrictive conditions applicable to said retirement systems, the investments permitted by said Amendment No. 450 shall be permitted for trust capital and trust income held in either the Alabama heritage trust fund or the Alabama trust fund; and provided further, that for purposes of implementing the preceding proviso with respect to the investment of funds held in the Alabama heritage trust fund, any provision of said Amendment No. 450 which refers to the whole or any percentage of the trust capital of the Alabama trust fund in connection with the investment thereof shall be deemed to refer to the trust capital of the Alabama heritage trust fund.

Any provision of this Constitution to the contrary notwithstanding, any capital gains realized from the sale of any investments forming a part of either the Alabama heritage trust fund or the Alabama trust fund shall become a part of the trust capital of the fund in which such investments were held and shall be subject to all restrictions applicable to the preservation of such trust capital.

### **AMENDMENT 543 RATIFIED**

#### **Acquisition, Maintenance and Protection of Unique Lands and Water Areas.**

##### **Section 1. Declaration of Purpose.**

The Legislature of Alabama finds that Alabama is endowed with a rich diversity of natural areas having unique ecological systems, plant and animal life, geological formations, wildlife habitats, recreational values and scenic beauty. As a part of the continuing growth of the population and the economic development of the state, it is necessary and desirable that certain lands and waters be set aside, managed and preserved for use as state parks, nature preserves, recreation areas, and wildlife management areas. In order to meet the State's outdoor recreation needs and to protect the natural heritage of Alabama for the benefit of present and future generations, it is the policy of the state to:

- (a) Protect, manage, and enhance certain lands and waters of Alabama with full recognition that this generation is a trustee of the environment for succeeding generations;
- (b) Protect, to the fullest extent practicable, recreational lands and areas of unique ecological, biological and geological importance; and
- (c) Promote a proper balance among population growth, economic development, environmental protection, and ecological diversity. Accordingly, there is hereby established the Alabama Forever Wild Land Trust for the purpose of identifying, acquiring, managing, protecting and preserving natural lands and waters that are of environmental or recreational importance.

## Section 2. Definitions.

- (1) "Alabama Trust Fund" means the irrevocable, permanent trust fund created by Amendment 450 to this Alabama Constitution of 1901.
- (2) "Alabama Trust Fund Board" means the board of trustees of the Alabama Trust Fund as established by Amendment 450 to this Alabama Constitution of 1901.
- (3) "Appraised Value" means that price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or sell.
- (4) "Board" means the Board of Trustees of the Alabama Forever Wild Land Trust, as established by Section 4 of this Amendment.
- (5) "Commissioner" means the Commissioner of the Alabama Department of Conservation and Natural Resources or any other officer of the state who, by law, shall succeed to his responsibilities.
- (6) "Conservation Easement" means a right, whether or not stated in the form of restriction, easement, covenant or condition, in any deed, will, or other instrument executed by or on behalf of the owner of land providing for the retention of properties predominantly in their natural, scenic, open or wooded condition, or as suitable habitat for fish and wildlife, or as recreational lands.
- (7) "Dedication" means the transfer to the state of an estate, interest, or right in a natural area to fulfill the purposes of this Amendment.
- (8) "Department" means the Alabama Department of Conservation and Natural Resources or any other department or agency of the state that, by law, shall succeed to its functions and responsibilities.
- (9) "Final Approval Committee" means a Committee, as established by Section 6 of this Amendment, to be composed of the Governor, the Lieutenant Governor and the Speaker of the House of Representatives.
- (10) "Forever Wild Land Trust" means the Alabama Forever Wild Land Trust created by this Amendment.

(11) "Instrument of Dedication" means any written document by which an estate, interest, or right in a natural area is formally dedicated as a natural area preserve.

(12) "Land" or "lands" means real property and any interests therein, including, but not limited to, fee simple titles, ownership interests less than fee simple, leases, easements, licenses, restrictions and use agreements. Such property and interests therein shall also include wetlands, estuarine areas and submerged lands and the waters thereon.

(13) "Natural Area" means any property, whether publicly or privately owned, (a) that retains or has generally reestablished its natural character, though it need not be completely natural and undisturbed, or (b) which is important in preserving rare or vanishing flora and fauna, native ecological systems, fish and wildlife habitats, geological, natural, scenic or similar features of scientific, recreational, or educational value benefitting the citizens of the state.

(14) "Natural Area Preserve" means a natural area that has been dedicated pursuant to Section 12 of this Amendment.

(15) "State" means the State of Alabama.

(16) "Stewardship" means the maintenance, protection, operation, enhancement, and management of lands acquired for the Forever Wild Land Trust.

(17) "Trustee" means a member of the Board of Trustees of the Forever Wild Land Trust.

(18) "Trust income" means the net income received by the state from the investment and reinvestment of all assets of the Alabama Trust Fund, determined in accordance with the provisions of Amendment Number 450 of the Constitution of Alabama of 1901.

(19) In dividing the State into geographical regions:

(a) "Central District" means the following counties of the state: Autauga, Bibb, Chambers, Chilton, Clay, Coosa, Elmore, Greene, Hale, Jefferson, Lee, Perry, Pickens, Randolph, Shelby, Sumter, Talladega, Tallapoosa, and Tuscaloosa.

(b) "Northern District" means those counties in the geographical region of the state north of the Central District, as defined above.

(c) "Southern District" means those counties in the geographical region of the state south of the Central District, as defined above.

(20) "Person" means any individual, firm, corporation, trust, partnership, or association.

### Section 3. Establishment of Forever Wild Land Trust, Lead Management Agency, and Categories of Lands to be Acquired.

(a) For the purposes set forth in this Amendment, there is hereby established the Alabama Forever Wild Land Trust, which shall be a permanent trust to be funded and administered in accordance with the provisions of this Amendment. Title to all properties acquired for the Forever Wild Land Trust shall be vested in the Alabama Trust Fund for the State of Alabama.

The Department shall serve as the lead management agency with respect to all lands acquired and shall have the responsibility of providing to the Board administrative support as necessary.

(b) In order to protect the natural heritage and diversity of Alabama for future generations, the state, acting through the Forever Wild Land Trust, will acquire lands, the title of which shall be held in the Alabama Trust Fund, to ensure their protection and use for conservational, educational, recreational or aesthetic purposes. These lands may include, but shall not be limited to, the following: Wetlands, river corridors, lakes and streams, and the banks and shores thereof, springs, riverine, montane, plain, coastal, and other kinds of terrain, geological systems, areas supporting threatened or endangered species, sensitive and ecologically important lands, unusual habitat types, forests and woodlands, fish and wildlife habitats, wilderness areas, unusual assemblages of wildflowers, natural lands, waters or wetlands that will provide public hunting and fishing, lands having other distinctive natural or recreational characteristics, and lands that will constitute suitable additions to the state's system of parks and fish and wildlife management areas.

(c) Property purchased with Forever Wild Land Trust moneys or which become part of the trust property through dedication or by some other means shall be subject to the condemnation of easements, rights-of-way and other necessary rights and estates in property by or on behalf of corporations that construct, own or operate railroads, pipelines for the transportation of oil, gas, fuel or water, hydroelectric or other electric generating facilities and electric lines, telephone transmission lines and other communication facilities, or any other public utility or method of transportation which serves, or is intended to serve, the public convenience and necessity to the same extent and under the same conditions that such lands, if owned by private persons, would be subject to condemnation by such corporations under federal or state law now in effect or hereafter enacted. No use of any such lands as determined by the Board shall constitute a use thereof for public purposes that will require proof of actual necessity by any corporation seeking to condemn such lands.

(d) Notwithstanding any other provision of this Amendment, no property shall be acquired for the Alabama Trust Fund or with moneys from the Forever Wild Land Trust through condemnation or the use of eminent domain.

(e) No funds or assets of the Forever Wild Land Trust derived from any source shall be expended or used to construct or improve buildings, structures or facilities used for human lodging, feeding or entertainment, including, without limitation thereto, hotels and other lodging facilities, restaurants, convention centers and meeting halls, golf courses, dancing or meeting pavilions, tennis courts, recreational dams, exhibition halls, and similar facilities that have a principal purpose not related to the stewardship of properties of the Forever Wild Land Trust, the title of which is held in the Alabama Trust Fund, in their natural state; provided, however, that nothing herein contained shall be construed to prohibit the expenditure of funds allocated to the Stewardship Account for the construction and maintenance of roads, bridges, culverts, drainage facilities, hiking trails, boat launching ramps and other improvements located on Trust Lands to provide reasonable public access thereto, for the construction and maintenance of visitors' centers and facilities, interpretive displays and other facilities for the guidance and education of visitors, for the construction and maintenance of facilities and the acquisition of equipment necessary or appropriate in connection with the performance of stewardship responsibilities (including housing for custodial personnel), or for any other purpose reasonably related to the stewardship responsibilities of the Board.

Section 4. Establishment of Board of Trustees of the Alabama Forever Wild Land Trust.

(a) There is hereby established the Board of Trustees of the Alabama Forever Wild Land Trust, which shall consist of fifteen voting members as follows:

(1) One member shall be the Commissioner of the Department who shall also serve as Chairman of the Board.

(2) One member shall be the State Forester.

(3) Three members which shall be appointed by the Alabama Commission on Higher Education from Departments of Biology, Zoology, Environmental Sciences and Wildlife Science from eligible four-year institutions of higher education in Alabama. An eligible institution shall consist of a public or private four-year college or university, offering a degree in biology or one of its divisions, and having an enrollment of at least 1500 undergraduate students. There shall be one professional biologist appointed to the Board from eligible institutions in the Northern District of the state, one from such institutions in the Central District of the state, and one from such institutions in the Southern District of the state, as said districts are defined in Section 2 hereof. Each eligible institution in the appropriate geographical region shall be entitled to submit one nomination to the Alabama Commission on Higher Education for the professional biologist trustee from that region on the Board.

(4) One member shall be the Executive Director of the Marine Environmental Sciences Consortium.

(5) There shall be three members from each of the three geographical regions of the state as defined in Section 2 of this Amendment, as follows. Provided, however, at least one appointee by the Governor, at least one appointee by the Lieutenant Governor and at least one appointee by the Speaker of the House of Representatives shall be black. If none of the recommending groups recommend a black to the appointing authority, said appointing authority shall appoint a black on his or her own initiative.

(A) One member from the Northern District shall be appointed by the Governor from a list of names presented by Group A and shall serve an initial term of six years. One member from the Northern District shall be appointed by the Lieutenant Governor from a list of names presented by Group B and shall serve an initial term of four years. One member from the Northern District shall be appointed by the Speaker of the House of Representatives from a list of names presented by Group C and shall serve an initial term of two years.

(B) One member from the Central District shall be appointed by the Lieutenant Governor from a list of names presented by Group C and shall serve an initial term of six years. One member from the Central District shall be appointed by the Speaker of the House of Representatives from a list of names presented by Group A and shall serve an initial term of four years. One member from the Central District shall be appointed by the Governor from a list of names presented by Group B and shall serve an initial term of two years.

(C) One member from the Southern District shall be appointed by the Speaker of the House of Representatives from a list of names presented by Group B and shall serve an initial term of six years. One member from the Southern District shall be appointed by the Governor from a list of names presented by Group C and shall serve an initial term of four years. One member from the

Southern District shall be appointed by the Lieutenant Governor from a list of names presented by Group A and shall serve an initial term of two years.

(D) Any successor appointments and appointments to vacancies shall be made in the same manner as described in subparagraphs (A), (B) and (C) above, and members appointed after the initial term of that office has expired shall serve for six-year terms, except that no member shall serve consecutive six-year terms.

(E) It is the intent of this Amendment that the eastern and western areas of the three geographical regions of the state shall be represented on the Board of Trustees.

(6) Each person appointed to the Board shall be and remain an Alabama resident and shall have a demonstrated knowledge of and commitment to land acquisition for the purposes of conservation and recreation. Organizations making recommendations to the appointing officials shall be Alabama organizations or the Alabama chapter of national organizations in order to ensure that the decisions affecting Alabama's future are made by Alabama residents.

The recommending groups are composed as follows:

(A) "Group A" shall consist of non-profit organizations, each having its principal programs extending generally throughout the State, whose demonstrated primary concerns are environmental protection for the state and its citizens and non-consumptive use and preservation of natural areas, and whose membership exceeds 750 individual residents of Alabama, including, but not limited to, The Nature Conservancy of Alabama, the Alabama Audubon Council (comprising the chapters in Alabama of the National Audubon Society), The Alabama Conservancy, the Alabama Chapter of the Sierra Club, and their respective successor organizations.

(B) "Group B" shall consist of business, industry, trade associations and professional organizations, each having its principal programs extending generally throughout the state, and having a demonstrated concern for balancing economic growth with protection for the environment and increased recreational opportunities, including, but not limited to, the Business Council of Alabama, the Alabama Forestry Association, Alabama Forest Resources Center, the Alabama Farmers Federation, the Petroleum Council of Alabama, the Association of County Commissions of Alabama, and their respective successor organizations.

(C) "Group C" shall consist of non-profit organizations, each having its principal programs extending generally throughout the state, whose demonstrated primary purposes are to promote hunting, fishing, camping or other compatible recreational activities or conservation for such purposes, and whose membership exceeds 750 individual residents of Alabama, including, but not limited to, the Alabama Wildlife Federation, the Alabama State Advisory Council of Ducks Unlimited, Bowhunters of Alabama Inc., the Coastal Land Trust, Inc., the Gulf Coast Conservation Association, the Tennessee Valley Waterfowl Association, the Alabama Rifle and Pistol Association, the Alabama Chapter of the Safari Club International (whether or not those named organizations meet the membership requirement), and their respective successor organizations.

(D) In order to qualify as a recommending organization, each organization not specifically listed in this section must file with the Secretary of State and with the named organizations within the same "group", by January 1 preceding the date of expiration of term of office of Trustees

hereunder, a written statement of intent to nominate persons to serve on the Board. This statement must include a request for designation of the "group" within which the organization plans to nominate Trustees and information demonstrating that the organization qualifies to make such nominations. It shall also include a copy of the organization's charter, stating its purpose. Should the Secretary of State or any of the named organizations within the same group oppose in writing the eligibility of the new organization to nominate members of the Board or the designation of the "group" within which it proposes to nominate members, then the Secretary of State shall determine the eligibility of the applying organization to submit nominations for membership on the Board and, if determined eligible, the "group" within which it shall submit nominations. In making this decision, the Secretary of State shall give due consideration to the views submitted to him by the organizations in the "group" within which the new organization proposes to submit nominations. An organization, together with its affiliates, cannot recommend names to the appointing officials as a member of more than one "group".

Each organization submitting nominations may submit, to the appropriate appointing official for that position on the Board, the names of not more than two of its members who have the qualifications to serve in the position for which they are being nominated. In the event that no organization within a group recommends names to the appointing official, then that official may appoint a Trustee from that group solely of his own choice.

(E) Terms of office of the initial Trustees shall begin on the January 1 following ratification of this Amendment, or on the first day of the third month following said ratification, whichever shall first occur. Terms of office of successor Trustees shall begin and end on anniversaries of that date. In the case of the initial appointments of Trustees, nominations shall be made to the appropriate appointing officials not later than one month after ratification of this Amendment, and appointments by said officials shall be made by the date of beginning of the initial Trustees' terms of office. Nominations of successor Trustees shall be made to the appropriate appointing officials not later than two months prior to the expiration of the Trustees' terms of office, and said officials shall appoint new Trustees within 30 calendar days after the expiration of said terms. In the event a Trustee resigns or dies, or otherwise vacates his office, the Commissioner or the Secretary of State shall promptly notify the appropriate nominating organizations and shall publish notice of such vacancy once a week for three successive weeks in three newspapers of regional circulation in this state with a request for new nominations from any group that may qualify to do so under the provisions of this Amendment. Nominations for a replacement Trustee shall be made to the appointing official during the 30 calendar days following such death, resignation or other vacation of office, and the appointing official shall appoint a replacement Trustee not later than the end of the next succeeding 30 calendar days thereafter. In the event the appropriate appointing official fails to make an initial appointment or an appointment within said 30-day periods for appointment after expiration of term of office or after death, resignation or other vacation of office, the right to make an appointment to fill that vacancy shall fall to the next appointing official in line of rotation of the Governor to the Lieutenant Governor to the Speaker of the House (with the Governor then to follow the Speaker); and, if that successor appointing official fails to make such appointment within 30 days, then the right to make the appointment shall fall to the next succeeding appointing official, all to the end that there will, as nearly as possible, always be a full complement of Trustees on the Board. Trustees appointed to fill a vacancy other than by reason of expiration of term of office shall serve the remainder of the unexpired term of the Trustee being replaced.

Section 5. Rights, Powers, and Duties of the Board.

(a) The Board is to meet at least quarterly each year for the transaction of its business and to review the progress of the Forever Wild Land Trust. It shall review written requests from state agencies, private organizations, and private citizens proposing that certain properties or interests therein be acquired. For purposes of establishing a quorum, there must be present at least three-fifths (3/5) of the members of the Board then in office at any Board meeting in order to conduct business; provided, however, that in absence of a quorum, the members present, by majority vote, may adjourn the meeting from time to time until a quorum shall attend. Any Board action or recommendation must be approved by at least three-fifths (3/5) of the members of the entire Board then in office, unless specified otherwise in this Amendment. Using its own knowledge and expertise, as well as the knowledge and expertise of the scientific community and state and federal agencies, the Board shall adopt a priority list of properties to be considered for acquisition. Recognizing that real estate transactions must involve willing sellers and may involve complicated procedures that could affect the availability of property, the Department shall, to the extent practicable, follow the directions of the Board in acquiring lands or waters. Provided, however, the Forever Wild Land Trust may only purchase or acquire an interest in property from the priority list of properties adopted by the Board.

(b) In addition to the site-specific management and allowable use guidelines referred to in Section 9, the Board may recommend to the Department rules, regulations and management criteria, which the Board feels would be beneficial to carrying out the goals and purposes of this Amendment.

(c) The Board shall assist the Department in developing and maintaining an inventory of areas and sites which through acquisition become state natural and/or recreational areas and shall make public as desirable information regarding their location, management, regulation, and permissible public uses.

(d) The Board shall prepare and submit to the Governor and the state Legislature, on or before February 1 of each year, a report which shall describe and account for all expenditures and acquisitions by the Forever Wild Land Trust for the preceding fiscal year, as well as plans for the current fiscal year. The Board shall present this annual report to the public at a public meeting to be held within ten days after February 1 of each year. The public meeting shall be an informal process to present information on the Forever Wild Land Trust to the public and give the public an opportunity to have a dialogue with the Board regarding its future plans and operations.

(e) Before purchasing or acquiring any interest in lands with moneys from the Forever Wild Land Trust, the Board, acting through the Commissioner, or the Commissioner on his own initiative, shall obtain at least two appraisals from certified real estate appraisers. In no event shall the Board expend more than the "appraised value", as defined in Section 2 of this Amendment, in purchasing such lands; provided, however, that by affirmative vote of at least three-fourths (3/4) of the members of the Board, the Board may expend up to 125 percent of the appraised value for such purchase where such action is necessary to accomplish the purposes and goals of this Amendment.

(f) The Board may assume indebtedness on behalf of the Forever Wild Land Trust that may be owed with respect to real or personal property given, donated, contributed or devised to the Forever Wild Land Trust, or that may be secured by a mortgage, deed of trust or security interest covering such property, and to agree to pay such indebtedness from current assets or future revenues of the Forever Wild Land Trust; provided that the present value of all installments of principal and of interest on such indebtedness at the time of the assumption

thereof, determined in accordance with accepted principles and using a discount rate equal to the rate of interest payable on such indebtedness, shall be less than 80% of the fair market value of such property as determined by an active public market for such property or an appraisal performed by an independent, professionally qualified appraiser.

(g) The Board may contract for the purchase of tracts or parcels of land in which the purchase price shall be payable in future installments, together with such rate of interest on the unpaid balance of such purchase price as the Board shall determine to be reasonable, and to secure the payment of such installments, together with the interest thereon, by purchase money mortgages on the land so acquired and by a pledge of future revenues committed to the Forever Wild Land Trust, including, without limitation thereto, any portion of the trust income allocated to said trust by Section 7 of this Amendment; provided that such installments shall in no event exceed 80% of the fair market value of such property determined as set forth in the preceding subsection and provided further that the total cumulative indebtedness assumed each year under the preceding sub-section (f) together with the total cumulative indebtedness incurred each year by purchase money mortgages as provided in this sub-section (g) shall be limited to no more than 25% of the trust income allocated to said trust for the preceding year.

(h) The Board may enter into contracts with any person, nonprofit organization, corporation, governmental entity or other entity concerning tracts or parcels of land that constitute desirable acquisitions for the Forever Wild Land Trust pursuant to which such person, nonprofit organization, corporation, governmental entity or other entity will agree to acquire and hold such land, or to hold such land if theretofore acquired by such person, nonprofit organization, corporation, governmental entity or other entity and to sell or donate such land to the Forever Wild Land Trust at some future date, in the interim preserving and managing such land in its natural state subject to such conditions, including the reimbursement of expenses, as the Board shall deem advantageous for the ultimate acquisition and preservation of such land.

(i) The Board may sell, lease or exchange specific properties or interests therein acquired or held by the Alabama Trust Fund for the Forever Wild Land Trust. Any such sale or exchange shall be made at not less than the "appraised value", as defined in Section 2 of this Amendment; provided, however, that by affirmative vote of at least three-fourths (3/4) of the members of the Board, the Board may authorize and direct the Commissioner to sell or exchange property of said trust for not less than 85 percent of the appraised value where such action is necessary to accomplish the purposes and goals of the Amendment. All moneys received from any such sale or lease shall be paid into the Forever Wild Land Trust.

(j) The Board shall establish a technical advisory committee, consisting of the State Forester, the President of the Alabama Chapter of the Wildlife Society, the State Geologist, and any other person whom the Board may desire to appoint, for the purpose of obtaining advice and assistance in performing the Board's functions and duties under this Amendment.

(k) In addition, the Board is authorized at its discretion:

(1) to establish procedures relating to the confidentiality of information where necessary to accomplish the purposes and goals of this Amendment;

(2) to cooperate or contract with any federal, state or local government agency, private organization, or individual to accomplish any of the purposes and goals of this Amendment,

paying any reasonable fees or expenses in connection with such cooperation or contracts from moneys held under or within the Forever Wild Land Trust;

(3) to recommend that moneys paid into the Forever Wild Land Trust be allowed to accumulate, with only the income thereon being spent, or that the corpus or principal of the Forever Wild Land Trust be expended in whole or in part;

(4) to do any and all things necessary to take advantage of federal, state, or local government or private funds donated or obtainable through the use of the Forever Wild Land Trust; and

(5) to adopt, alter and repeal bylaws, regulations and rules in accordance with the provisions of the Administrative Procedure Act for the regulation and conduct of its affairs and business in accordance with the provisions of the Alabama Administrative Procedures Act.

(l) Members of the Board and the technical advisory committee shall be entitled to receive the per diem allowance and travel expenses provided by law to state employees. These expense payments shall be for the sole purpose of travel to and from their places of residence to meetings and for travel involving official business of the Forever Wild Land Trust. Those members who are state officials or employees shall serve without compensation or expense allowances other than that to which they are otherwise entitled in the positions they hold.

(m) The Commissioner and the Department are hereby specifically authorized and empowered to carry out all directions and recommendations of the Board made hereunder to accomplish the purposes of the Forever Wild Land Trust and this Amendment.

#### Section 6. Final Approval Committee.

There is hereby established a Final Approval Committee to be composed of the Governor, the Lieutenant Governor and the Speaker of the House of Representatives.

Before purchasing or leasing any property, or acquiring any interest therein, with any funds from the Forever Wild Land Trust or selling any properties previously purchased from the Forever Wild Land Trust, the Board shall submit to the Final Approval Committee a written proposal of the purchase, lease, sale or acquisition of any other interest in property. Said proposal shall include a legal description of the property to be purchased, leased or sold; the proposed purchase, lease or sale price; and any additional terms of the sale, purchase, lease or other interest therein. The Final Approval Committee shall approve or disapprove the proposal by a majority vote of the full membership of said Committee within 30 days after the date of submission of the proposal. Failure of the Committee to act within 30 days of submission shall constitute approval of said proposal.

#### Section 7. Source of Funds.

(a) Beginning with the state's 1992-1993 fiscal year, there shall be allocated and paid into the Forever Wild Land Trust the percentage of trust income earned from the Alabama Trust Fund that would have been reinvested in the Alabama Trust Fund under Section 4(c) of Amendment Number 450 to this Alabama Constitution of 1901. Notwithstanding Section 4(c) of Amendment Number 450 to the Alabama Constitution of 1901, the percentage of trust income earned from the Alabama Trust Fund shall be allocated to the Forever Wild Land Trust as follows:

- (1) For the 1992-1993 fiscal year, four percent (4%) of the trust income earned from the Alabama Trust Fund.
  - (2) For the 1993-1994 fiscal year, five percent (5%) of the trust income earned from the Alabama Trust Fund.
  - (3) For the 1994-1995 fiscal year, six percent (6%) of the trust income earned from the Alabama Trust Fund.
  - (4) For the 1995-1996 fiscal year, seven percent (7%) of the trust income earned from the Alabama Trust Fund.
  - (5) For the 1996-1997 fiscal year, eight percent (8%) of the trust income earned from the Alabama Trust Fund.
  - (6) For the 1997-1998 fiscal year, nine percent (9%) of the trust income earned from the Alabama Trust Fund.
  - (7) Thereafter, ten percent (10%) of the trust income earned from the Alabama Trust Fund; provided, however, that in no event shall such trust income paid to the Forever Wild Land Trust exceed \$15 million in any one fiscal year.
- (b) The Alabama Trust Fund Board shall provide the Board of Trustees of the Forever Wild Land Trust with advice and assistance in the investment of funds in the Forever Wild Land Trust.
- (c) Title to the property acquired from funds in the Forever Wild Land Trust shall be held in the Alabama Trust Fund for the State of Alabama. Provided, however, the Alabama Trust Fund Board shall not have any responsibility for nor any control over the approving or disapproving of the acquisition, disposition or use of any such property. Nothing in this Amendment or Amendment 450 to this Alabama Constitution of 1901 shall be construed so as to require the Alabama Trust Fund Board to have a fiduciary responsibility for the investment of Forever Wild Land Trust funds or the production of income from property acquired by the Board of Trustees of the Forever Wild Land Trust.
- (d) The amounts allocated to the Forever Wild Land Trust shall be included in determining whether the trust income received by the state from the Alabama Trust Fund equals or exceeds \$60,000,000 for the purposes of the County Government Capital Improvement Act (codified at Sections 11-29-1 through 11-29-7 of the Code of Alabama, 1975, as amended) and the Municipal Government Capital Improvement Act (codified at Sections 11-66-1 through 11-66-7 of the Code of Alabama, 1975, as amended). In no event shall any provision hereof serve to decrease the amount of income from the Alabama Trust Fund which is to be appropriated to the Municipal Government Capital Improvement Fund and the County Government Capital Improvement Fund under the above-referenced acts.

#### Section 8. Donations of Property.

Any person making a donation of any property or any interest therein, to the state for the purposes of this Amendment, shall receive, irrespective of any other provisions of the income tax laws of the state, twice the ordinary deduction for state income tax purposes for the taxable year in which the property or interest is donated. Provided, however, the value of any such

property or interest therein, subject to this double deduction, shall be limited to the actual value of the property, or any interest therein, donated to the state which shall not include any indebtedness, encumbrances or liens assumed by the Forever Wild Land Trust or the value of any interests or rights retained by the donor.

For the purposes of this section, the "actual value" of property shall be the appraised value for ad valorem taxation purposes, averaged over the preceding five years.

#### Section 9. Stewardship Account.

The Alabama Trust Fund Board shall establish a separate account within the Alabama Trust Fund to be known as the Forever Wild Land Trust Stewardship Account. When the Forever Wild Land Trust acquires property or an interest in property pursuant to this Amendment, the Board of Trustees of the Forever Wild Land Trust shall set aside an amount from the Forever Wild Land Trust equal to fifteen percent (15%) of the appraised value of the land acquired, or the land affected if less than a fee interest was acquired. The Alabama Trust Fund Board shall provide for the investment of the Stewardship Account. The Board of Trustees of the Alabama Forever Wild Land Trust may authorize the Department to expend any interest income generated from the investment of funds within the Stewardship Account by the Alabama Trust Fund Board. Provided, however, the Commissioner shall notify the Board of Trustees in writing if he determines that the interest income projected to be generated from the Forever Wild Land Trust Stewardship Account for the next fiscal year will be insufficient to properly manage property acquired by the Forever Wild Land Trust. The Board may authorize by a three-fifths (3/5) vote that funds within the corpus of the Forever Wild Land Trust Stewardship Account be expended by the Department for management purposes for the next fiscal year, provided that funds from the Stewardship Account may not be expended to purchase additional property or interests therein. Within one year after the Forever Wild Land Trust acquires any properties pursuant to this Amendment, the Board of Trustees of the Forever Wild Land Trust shall develop management and allowable use guidelines which shall be followed by the Department in the administration and stewardship of that piece of property. The Lands Division of the Department shall, in accordance with such general directions as may be given by the Board of Trustees, coordinate management of properties acquired pursuant to this Amendment and expenditures from the Stewardship Account. All lands will be managed under the multiple-use management principle; to insure that all resource values including recreation, hunting, fishing, boating, hiking, aesthetics, soil, water, forest management and minerals are protected or enhanced. No use will be allowed that is not compatible with the primary purpose for acquiring the land. In coordinating such management within the Department, the Game and Fish Division of the Department shall manage wildlife and fisheries programs; the State Parks Division of the Department shall manage parks programs; the Lands Division of the Department shall manage natural areas programs through its Natural Heritage Program; and the Lands Division of the Department shall manage other activities and programs relating to Forever Wild Land Trust properties. The Forestry Commission shall serve as consultant to the Department for the purpose of managing the forest and forestry resources programs. Any income that may be generated from the property or from any use of said property acquired through the Forever Wild Land Trust shall be treated as interest income of the Alabama Trust Fund and shall accrue to the credit of the general fund of the State of Alabama.

The right of the public to hunt and fish on the lands and easements acquired under the provisions of this act shall not be abridged or restricted, subject to such rules, regulations,

seasons and limits as are established by the Department of Conservation and Natural Resources.

#### Section 10. Enforceability of Conservation Restrictions; Recordation; Acquisition and Disposal of Interests.

(a) No conservation restriction or easement as defined in Section 2 of this Amendment held by any governmental body shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of the benefit being assignable to or being assigned to any other governmental body with like purposes. All such restrictions and easements shall be duly recorded and indexed in the manner of other conveyances of interests in land, and shall describe the land subject to the restrictions or easements by adequate legal description or by reference to a recorded plat showing its boundaries.

Such conservation restrictions are interests in land and may be acquired by any governmental body which has power to acquire interests in land, in the same manner as it may acquire other interests in land. Such a restriction or easement may be enforced by injunction or proceeding in equity, and shall entitle the holder of it to enter the land in a reasonable manner and at reasonable times to assure compliance. Such a restriction or easement may be released in whole or in part, by the holder for such consideration, if any, as the holder may determine, in the same manner as the holder may dispose of land or other interest in land, subject to such conditions as may have been imposed at the time of creation of the restriction.

This section shall not be construed to imply that any restriction, easement, covenant or condition which does not have the benefit of this section shall, on account of any provision hereof, be unenforceable. Nothing in this Amendment shall diminish the powers granted by any law to acquire by purchase, gift, eminent domain or otherwise as restricting the use of an existing or future easement, express or implied, in favor of any utility or other holder of an easement for public purpose. The existence of conservation easements or restrictions shall not of itself be proof of value as a measure of damages in any eminent domain proceedings.

(b) When a conservation restriction or easement is held by public body under the program established by this Amendment, the real property subject thereto shall be assessed for taxation purposes on the basis of the true cash value of the property or as otherwise provided by law, less such reduction in value as may result from the granting of the conservation restriction or easement. The value of the interest held by the public body shall be exempt from property taxation to the same extent as other public property.

#### Section 11. Alabama Natural Heritage Program.

(a) The Alabama Natural Heritage Program is hereby established as a part of the Lands Division of the Department, or its duly designated successor, and shall be funded from the Forever Wild Land Trust or the Forever Wild Land Trust Stewardship Account as provided by the Board, and from private donations.

(b) For purposes of this program, the Department, subject to approval by the Board, shall:

(1) Produce an inventory of Alabama's natural heritage resources, including their location and ecological status.

(2) Maintain a natural heritage data bank of inventory data and other relevant information for ecologically significant sites supporting natural heritage resources. Information from this data bank may be made available to public agencies and to private institutions or individuals for environmental assessment and land management purposes.

(3) Develop a Natural Heritage Plan which suggests priorities for the protection, acquisition and management of dedicated natural area preserves.

(4) Establish procedures relating to the confidentiality of data and inquiries for information in order to protect natural resources and encourage use by public agencies and private organizations and individuals in planning or conducting their activities.

#### Section 12. Dedication of Natural Area Preserves.

(a) The Department shall, in the name of the State and upon the recommendation of the Board, accept the dedication of natural areas on lands deemed by the Board and the Commissioner to qualify as natural area preserves under the provisions of this Amendment. Natural area preserves may be offered for dedication by voluntary act of the owner. The owner of a qualified natural area may transfer fee simple title or other interest in land to the State. Natural area preserves may be acquired by gift, grant or purchase.

(b) Dedication of a natural area preserve shall become effective only upon acceptance of the instrument of dedication by the Board and the Commissioner.

(c) The instrument of dedication may:

(1) Contain restrictions and other provisions relating to management, use, development, transfer, and public access, and may contain any other restrictions and provisions as may be necessary or advisable to further the purposes of this Amendment;

(2) Define, consistent with the purposes of this Amendment, the respective rights and duties of the owner and of the state and provide procedures to be followed in case of violations of the restrictions;

(3) Recognize and create reversionary rights, transfers upon condition or with limitations, and gifts over; and

(4) Vary in provisions from one natural area preserve to another in accordance with differences in the characteristics and conditions of the several areas.

(d) Public departments, commissions, boards, counties, municipalities, corporations, colleges, universities and all other agencies and instrumentalities of the state and its political subdivisions may dedicate suitable areas within their jurisdiction as natural area preserves in accordance with the powers and authorities granted to such organizations by existing state legislation.

(e) The Board may enter into amendments to the instrument of dedication upon finding that such amendments will not permit an impairment, disturbance, use, or development of the area inconsistent with the provisions of this Amendment. If the fee simple estate in the natural area

preserve is not held by the state under this article, no amendment may be made without the written consent of the owner of the other interests therein.

#### Section 13. Sunset Provision.

Beginning with the state's 2012-2013 fiscal year and each succeeding fiscal year, all moneys to be paid into the Forever Wild Land Trust shall be paid to the Alabama Trust Fund in the event the Legislature has not provided for the continuation of payments into the Forever Wild Land Trust Fund as provided for in this section, provided that 2.5% of the trust income earned from the investment of funds in the Alabama Trust Fund shall continue to be paid to the Forever Wild Stewardship Account established in Section 9 of this Amendment until such time as the Legislature, by legislative act, determines that interest income earned from the investment of funds within the corpus of the Stewardship Account is sufficient for the proper administration and stewardship of properties acquired from the Forever Wild Land Trust. And provided further, that the Legislature, by legislative act, or by the enactment of a constitutional amendment may continue payment of the revenues provided in Section 7 hereof, or at any time provide for the payment of other revenues, into the Forever Wild Land Trust. At such time as the payment of trust income into the Forever Wild Land Trust shall cease, the percentage of trust income accruing to said trust fund shall be paid into the Alabama Trust Fund each year to become a part of the corpus of the Alabama Trust Fund.

#### Section 14. Amendment Self-Executing.

This Amendment shall be self-executing, but the Legislature shall have the right and power to enact laws supplemental hereto and in furtherance of the purposes and objectives hereof, provided that such laws are not inconsistent with the provisions of this Amendment.

#### Section 15. Severability.

If any provision of this Amendment, or the application of any provision to any entity, person, or circumstance is for any reason adjudged by a court of competent jurisdiction to be invalid, the remainder of this Amendment and its application shall not be affected.

### **AMENDMENT 666 RATIFIED**

#### **County and Municipal Government Capital Improvement Trust Fund; Alabama Capital Improvement Trust Fund.**

Section I. The Legislature finds that the capital improvements and technology required by many governmental programs could be more efficiently funded through the establishment of a special trust fund dedicated to funding such improvements. Additionally, municipal and county governments require assistance in the funding of capital improvements. In order to meet these requirements, it is necessary and prudent to redistribute a portion of the Oil and Gas Capital Payments now being paid into the Alabama Trust Fund under Amendment No. 450 to the Constitution of Alabama of 1901. Accordingly, this amendment establishes the County and Municipal Government Capital Improvement Fund and the Alabama Capital Improvement Trust Fund to be administered in accordance with the provisions of this amendment. Finally, the Legislature finds that it is necessary and desirable to issue general obligations bonds for the

purposes of (i) making substantial capital improvements to the state dock facilities at the Port of Mobile, (ii) promoting economic development and industrial recruitment in the state, (iii) providing local government match monies required to issue federal grant revenue bonds for road and bridge improvements and (iv) providing funds to municipal governments for infrastructure improvements.

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.

"Alabama Capital Improvement Trust Fund" means one of the special trust funds created by this amendment.

"Capital Improvements" means capital outlay projects that include the planning, designing, inspection, purchasing, construction, reconstruction, improvement, repair or renovation of permanent buildings, docks, structures and sites therefor for the executive, legislative or judicial branches of state government. The term "Capital Improvement" shall also mean the construction or improvement of roads and bridges in the highway system; payment of debt service on the bonded indebtedness issued by the State of Alabama or any public corporation or authority of the State of Alabama; funding economic development and industrial recruitment activities; and the procurement of technical equipment, including computer and telecommunications equipment, required for the operation of any governmental entity.

"County and Municipal Capital Improvement Trust Fund" means one of the special trust funds created by this amendment.

"Docks Improvements" means the acquisition, development, construction, improvement, expansion and modernization of the state docks facilities (including, without limitation, cargo handling facilities) at the Port of Mobile.

"Docks Improvement Costs" means all costs and expenses incurred in connection with the Capital Improvements, including, without limitation, the following:

(a) The costs of acquiring, constructing, installing and equipping Docks Improvements, including all obligations incurred for labor and to contractors, subcontractors, builders and materialmen.

(b) The costs of acquiring land or rights in land and any costs incidental thereto, including recording fees.

(c) The costs of contract bonds and of insurance of all kinds that may be required or necessary during the acquisition, construction or installation of Docks Improvements.

(d) The costs of architectural and engineering services, including test borings, surveys, environmental mitigation, supervision of construction and the like with respect to Docks Improvements.

(e) The costs of acquiring and installing fixtures and equipment, excavation, removal and demolition of structures, and provisions for drainage, stormwater retention, installation of utilities, and similar facilities, and paving.

(f) Interest accruing with respect to General Obligation Bonds for a period of up to two years after the issuance of such General Obligation Bonds.

(g) All costs, expenses and fees incurred in connection with the issuance of General Obligation Bonds, including, without limitation, all legal, accounting, financial, printing, recording, filing and other fees and expenses.

(h) The costs for obtaining bond insurance, letters of credit, or other forms of credit enhancement or liquidity facilities.

(i) All other costs of a nature comparable to or required in connection with those described.

(j) Reimbursement to any person of any of the foregoing costs incurred by such person either for its own account, or for the account of the State of Alabama and without regard to when incurred.

"Economic Development Costs" means the costs and expenses incurred or to be incurred by the state in connection with economic development projects and the recruitment of industrial prospects to the state including, without limitation, site preparation and infrastructure improvements, the costs of training and educating workers in the state and acquiring and constructing training facilities in the state, together with the costs, expenses and fees incurred in connection with the issuance of General Obligation Bonds for such purposes and the costs for obtaining bond insurance and other forms of credit enhancement on General Obligation Bonds issued for such purposes, and the reimbursement to any person of any of the foregoing costs incurred by such person either for its own account or for the account of the State of Alabama, its agencies or authorities.

"Fiscal Year" means the period beginning October 1 and ending September 30 of the following calendar year.

"General Fund" means the general fund in the State Treasury of the State of Alabama.

"General Obligation Bonds" means bonds, including refunding bonds, to be issued by the State of Alabama for the purpose of financing Docks Improvements Costs, Economic Development Costs, Local Government Match Funds and Municipal Infrastructure Costs, as provided in this amendment.

"Local Government Match Funds" means the monies required to be provided by the State of Alabama as a condition to the issuance of federal grant revenue bonds for road and bridge improvements, together with the costs, expenses and fees incurred in connection with the issuance of General Obligation Bonds for such purposes and the costs of obtaining bond insurance and other forms of credit enhancement on General Obligation Bonds for such purposes.

"Municipal Infrastructure Costs" means the cost of acquiring and constructing municipal infrastructure improvements through the Alabama Department of Transportation, together with

the costs, expenses and fees incurred in connection with the issuance of General Obligation Bonds for such purposes and the costs of obtaining bond insurance and other forms of credit enhancement on General Obligation Bonds for such purposes.

"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 off 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 that 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.

"Realized Capital Gains" means gains from the sale or exchange of assets of the Alabama Trust Fund, other than fixed income assets, to the extent they exceed losses from the sale of such assets. The amount of gain or loss on the sale of an asset shall be determined by subtracting from the proceeds of selling the asset its fair market value as of the end of the immediately preceding fiscal year, or, in the case of the fiscal year in which this amendment is ratified, its fair market value as of the first business day following ratification of this amendment.

"Trust Income" means the Trust Income as defined in Amendment Numbers 450 and 488 to the Constitution of Alabama of 1901.

"Unrealized Capital Gains" means the excess of the fair market value of the Alabama Trust Fund on the last day of the fiscal year over the fair market value of the Trust Fund on the last day of the immediately preceding fiscal year. The fair market value of the Trust Fund on the last day of a fiscal year shall be determined without including the Trust Income for the fiscal year; realized capital gains for the fiscal year; or the fair market value of fixed income assets. For the fiscal year beginning October 1, 2001, the fair market value of the assets on September 30, 2002, shall be determined without regard to the fair market value on the date of transfer of the assets transferred from the Alabama Heritage Trust Fund.

Section III. Distributions of Trust Income and capital gains earned by the Alabama Trust Fund shall be made annually in accordance with the following:

(a) In any fiscal year in which the Trust Income exceeds \$60,000,000, ten percent (10%) of the Trust Income shall be distributed to the Municipal Government Capital Improvement Fund created in Section 11-66-4, Code of Alabama 1975, and ten percent (10%) of the Trust Income shall be distributed to the County Government Capital Improvement Fund created in Section 11-29-4, Code of Alabama 1975. The Director of Finance shall certify such amounts to the State Comptroller, who shall make the required distributions not later than April 15 of the following fiscal year. The distributions provided for in this section shall be in lieu of and not in addition to the distributions required by Sections 11-29-5 and 11-66-5, Code of Alabama 1975. The remainder of the Trust Income shall be paid into the General Fund, except as provided by Amendment 543 to the Constitution of Alabama of 1901. Provided, however, the fiscal year following the first fiscal year that the Forever Wild Land Trust receives fifteen million dollars (\$15,000,000) from the trust income of the Alabama Trust Fund, one-fourth (1/4) of one percent of the trust income earned from the Alabama Trust Fund shall be allocated to the Alabama

Senior Services Trust Fund. This allocation shall increase each fiscal year by one-fourth (1/4) of one percent of the trust income earned from the Alabama Trust Fund; provided, however, that in no event shall such trust income paid to the Alabama Senior Services Trust Fund exceed five million dollars (\$5,000,000) in any one fiscal year.

(b) Notwithstanding any other provision of this constitution, within 30 days following the end of each fiscal year, the Board of Trustees of the Alabama Trust Fund may transfer up to seventy-five percent (75%) of the realized capital gains for such fiscal year. The amount distributed shall be divided as follows: ten percent (10%) to the County Government Capital Improvement Fund created in Section 11-29-4, Code of Alabama 1975, and ten percent (10%) to the Municipal Government Capital Improvement Fund created in Section 11-66-4, Code of Alabama 1975, and the remainder of such realized capital gains shall be paid into the General Fund, except that a portion of such realized capital gains shall be distributed in the same manner as and deemed to be a part of trust income for purposes of the distributions required under Sections 7 and 13 of Amendment 543 to the Constitution of Alabama of 1901.

(c) Notwithstanding any other provision of this constitution, within 30 days following the end of each fiscal year, the Board of Trustees of the Alabama Trust Fund may transfer up to seventy-five percent (75%) of the unrealized capital gains for such fiscal year. The amount distributed shall be divided as follows: ten percent (10%) to the County Government Capital Improvement Fund created in Section 11-29-4, Code of Alabama 1975, and ten percent (10%) to the Municipal Government Capital Improvement Fund created in Section 11-66-4, Code of Alabama 1975, and the remainder of such unrealized capital gains shall be paid into the General Fund except that a portion of such unrealized capital gains shall be distributed in the same manner as and deemed to be a part of trust income for purposes of the distributions required under Sections 7 and 13 of Amendment 543 to the Constitution of Alabama of 1901.

Section IV. Beginning on October 1 immediately following the ratification of this amendment, 35% of all Oil and Gas Capital Payments paid into the Alabama Trust Fund in any fiscal year shall be transferred by the State Treasurer to the special trust funds created by this amendment in the following manner: (a) an amount equal to seven percent (7%) of all Oil and Gas Capital Payments received by the Alabama Trust Fund during the preceding fiscal year shall be paid into the County and Municipal Government Capital Improvement Trust Fund; and (b) an amount equal to twenty-eight percent (28%) of all Oil and Gas Capital Payments received by the Alabama Trust Fund during the preceding fiscal year shall be paid into the Alabama Capital Improvement Trust Fund.

Section V. (a) Funds in the Alabama Capital Improvement Trust Fund shall be invested by the Board of Trustees in such kinds of investments as are authorized for the investment of the Alabama Trust Fund. All income of such funds (determined in the same manner as Trust Income of the Alabama Trust Fund) shall be deposited into the General Fund.

(b) Funds in the County and Municipal Government Capital Improvement Trust Fund shall be invested by the Board of Trustees in such kinds of investments as are authorized for the investment of the Alabama Trust Fund. All income of such fund (determined in the same manner as Trust Income of the Alabama Trust Fund) shall be deposited into the County and Municipal Government Capital Improvement Trust Fund subject to distribution pursuant to Section VI.

(c) The Board of Trustees shall determine from time to time the asset allocation of investments in the Alabama Trust Fund and shall determine the annual amount of Realized and Unrealized Capital Gains to be transferred to the General Fund. The Secretary-Treasurer of The Retirement Systems of Alabama shall be the initial manager of 50 percent of the assets, and financial institutions and other corporate entities with general trust powers shall be the initial manager or managers of 50 percent of the assets in the Alabama Trust Fund, subject to guidelines provided by the Board of Trustees. The Board of Trustees shall have the power to appoint another person or persons to manage all or any portion of the assets in the Alabama Trust Fund upon a two-thirds vote of the Board of Trustees.

Section VI. On April 1 of each year, the State Comptroller shall distribute one-half of all Trust Income earned during the preceding fiscal year from the investment of funds contained in the County and Municipal Government Capital Improvement Trust Fund to the Municipal Government Capital Improvement Fund created by Section 11-66-4, Code of Alabama 1975, and one-half of said Trust Income to the County Government Capital Improvement Fund created by Section 11-29-4, Code of Alabama 1975. Distributions of Trust Income to the Municipal Government Capital Improvement Fund shall be administered in accordance with Section 11-66-6, Code of Alabama 1975. Distributions of Trust Income to the County Government Capital Improvement fund shall be administered in accordance with Section 11-29-6, Code of Alabama 1975.

Section VII. Funds in the Alabama Capital Improvement Trust Fund may be appropriated for Capital Improvements only upon the certification of the Governor, based upon the recommendation of the Director of Finance, that funds are needed for particular Capital Improvements. The Governor's certification for such Capital Improvements shall be contained in his or her budgets for the operation of state government submitted annually to the Legislature. Legislative appropriations from this Fund that are in excess of those contained in the Governor's certification must be accompanied by legislative findings of fact explaining the appropriations that differ from or are in excess of those certified by the Governor. The foregoing notwithstanding, the Legislature may appropriate funds from this trust fund for Capital Improvements upon a recorded majority vote of each house.

Section VIII. The State of Alabama is authorized to become indebted and to sell and issue its interest-bearing General Obligation Bonds, in addition to all other bonds of the state, in an aggregate principal amount not exceeding \$350 million. The General Obligation Bonds issued pursuant to this amendment shall be general obligations of the State, and the full faith and credit of the State are hereby irrevocably pledged for the prompt and faithful payment of the principal, interest and redemption premium (if any) on the General Obligation Bonds.

Section IX. The Governor, the Director of Finance, the Commissioner of Revenue, the Chairman of the Senate Finance and Taxation General Fund Committee and the Chairman of the House Ways and Means General Fund Committee are hereby constituted a Bond Commission with full authority, except as herein specified or limited, to determine the terms and conditions of the General Obligation Bonds and to provide for the sale and issuance thereof. No member of the Bond Commission shall receive compensation in any form for any services performed by him or her in and about his or her duties as a member or officer of the Bond Commission. The Bond Commission shall meet at the call of the Governor, who is hereby designated its chairman. Three members of the Bond Commission (at least one of which shall be the Chairman of the Senate Finance and Taxation-General Fund Committee or the Chairman of the Ways and Means-General Fund Committee) shall constitute a quorum for the transaction of business, and

all proceedings of the Bond Commission shall be reduced to writing, recorded in a substantial record book and filed with the Director of Finance, who is hereby designated as the Secretary of the Bond Commission and who shall keep the records of the proceedings of the Bond Commission.

Section X. The proceeds of the General Obligation Bonds shall be paid into the State Treasury, shall be kept continually invested pending the expenditure thereof, and shall, together with the income derived from the investment and reinvestment thereof (including income derived from the investment and reinvestment of previously derived income), be retained in one or more separate accounts of the State Treasury until expended for the purposes authorized in this amendment and in the manner provided by law. The proceeds of such General Obligation Bonds, together with the investment income derived from said proceeds, shall be used solely for the purpose of paying Docks Improvement Costs, Economic Development Costs, Local Government Match Funds and/or Municipal Infrastructure Costs. Not more than \$50 million of the proceeds of such General Obligation Bonds shall be spent for local government match funds and not more than \$15 million of such proceeds shall be spent for municipal infrastructure costs.

Section XI. There is hereby appropriated for the payment of the General Obligation Bonds such monies out of the Alabama Capital Improvement Fund as are necessary to pay principal of, interest on and redemption premium (if any) on the General Obligation Bonds. Monies in the Alabama Capital Improvement Trust Fund are also hereby appropriated for the payment of principal of, interest on and redemption premium (if any) on bonds authorized to be issued pursuant to Amendments Nos. 618, 619 and 620 of the Constitution of Alabama of 1901.

## **AMENDMENT 803 RATIFIED**

### **Repeal of Amendment 709.**

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 Alabama 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 off 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 that 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 within 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 or the General Fund Rainy Day Account shall be credited with Oil and Gas Capital 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 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 subsections (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 subsections (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 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 of 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.

### **AMENDMENT 856 RATIFIED**

#### **Distributions from Alabama Trust Fund; distributions from County and Municipal Government Capital Improvement Trust Fund..**

Section 1. (a) Notwithstanding any other provision of this constitution, beginning with the state's 2012-2013 fiscal year, the following distributions shall be made annually from the Alabama Trust Fund in lieu of any other distributions of trust income, realized capital gains, or unrealized capital gains provided by law:

(1) An amount equal to thirty-three percent (33%) of the oil and gas capital payments paid into the Alabama Trust Fund for the fiscal year ending one year prior to the beginning of the fiscal year for which the distribution is being made plus five percent (5%) of the average market value of invested assets of the Alabama Trust Fund as of the end of the three fiscal years ending one, two, and three years prior to the beginning of the fiscal year for which the distribution is being made shall be distributed as follows:

a. Ten percent (10%) of the amount distributed shall be paid to the County Government Capital Improvement Fund and shall be distributed pursuant to Section 11-29-6, Code of Alabama 1975, as amended.

b. Ten percent (10%) of the amount distributed shall be paid to the Municipal Government Capital Improvement Fund and shall be distributed pursuant to Section 11-66-6, Code of Alabama 1975, as amended.

c. If the constitutional amendment proposed by Act 2011-315 is ratified, then ten percent (10%) of the amount distributed, but not more than fifteen million dollars (\$15,000,000) in any one fiscal year, shall be paid to the Forever Wild Land Trust. This distribution shall continue through the fiscal year ending September 30, 2032, and shall not be made after the end of that fiscal year. If the constitutional amendment proposed by Act 2011-315 is not ratified, then one percent (1%) of the amount distributed, but not more than one million dollars (\$1,000,000) in any one fiscal year, shall be paid to the Forever Wild Land Trust Stewardship Account.

d. One percent (1%) of the amount distributed, but not more than five million dollars (\$5,000,000) in any one fiscal year, shall be paid to the Alabama Senior Services Trust Fund.

e. The remainder of the amount distributed shall be paid to the State General Fund.

(b) Beginning with the state's 2012-2013 fiscal year, an amount equal to five percent (5%) of the average market value of invested assets of the County and Municipal Government Capital Improvement Trust Fund as of the end of the three fiscal years ending one, two, and three years prior to the beginning of the fiscal year for which the distribution is being made shall be distributed as follows:

(1) Fifty percent (50%) of the amount distributed shall be paid to the County Government Capital Improvement Fund and shall be distributed pursuant to Section 11-29-6, Code of Alabama 1975, as amended.

(2) Fifty percent (50%) of the amount distributed shall be paid to the Municipal Government Capital Improvement Fund and shall be distributed pursuant to Section 11-66-6, Code of Alabama 1975, as amended.

(c) Notwithstanding the provisions of subsections (a) and (b) of this Section, 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. The Board shall make this election at least six months prior to the beginning of the fiscal year for which the distributions will be made.

(d) For purposes of this amendment, "invested assets" means all assets which are invested in accordance with the investment policy statement adopted by the Board of Trustees of the Alabama Trust Fund. Invested assets shall not include investments in land or properties acquired for the Forever Wild Land Trust and vested in the Alabama Trust Fund and shall not include any outstanding and unpaid amounts due to the Education Trust Fund Rainy Day Account or to the General Fund Rainy Day Account.

Section 2. A County and Municipal Government Capital Improvement Trust Fund Advisory Committee is created. The Committee shall be composed of three members appointed by the Alabama League of Municipalities and three members appointed by the Association of County Commissions of Alabama. The Committee shall serve in an advisory role, and the Board of Trustees of the Alabama Trust Fund shall define the duties of the Committee.

Section 3. Beginning with the state's 2012-2013 fiscal year, whenever funds are withdrawn from the Education Trust Fund Rainy Day Account or the General Fund Rainy Day Account, there shall not be any additional transfer of funds into the County and Municipal Government Capital Improvement Trust Fund, and investment income earned on amounts repaid to the Education Trust Fund Rainy Day Account and the General Fund Rainy Day Account shall not be distributed to the State General Fund.

Section 4. Beginning with the state's 2012-2013 fiscal year and continuing through the state's 2014-2015 fiscal year, there is hereby transferred \$145,796,943 annually to the State General Fund from the Alabama Trust Fund.

Section 5. All laws or parts of laws in conflict with this amendment are repealed, including, but not limited to: Those portions of Amendments 450, 543, and 666 to the Constitution of Alabama of 1901, relating to the distribution of trust income, realized capital gains, and unrealized capital gains; Amendment 668 to the Constitution of Alabama of 1901, relating to the distribution of trust income; those portions of Amendment 803 to the Constitution of Alabama of 1901, relating to additional transfers to the County and Municipal Government Capital Improvement Fund and the distribution of investment income on repayments to the Education Trust Fund and State General Fund Rainy Day Accounts; and Sections 11-66-5 and 11-29-5 of the Code of Alabama 1975, as amended, relating to appropriations of trust income to the County and Municipal Government Capital Improvement Trust Funds.

END OF PROPOSED AMENDMENT

### **AMENDMENT 887 RATIFIED**

#### **Distributions from Alabama Trust Fund for additional payments to fund bonds.**

- (a) The authority granted to the State of Alabama to become indebted and to sell and issue its interest-bearing General Obligation bonds, in addition to all other bonds of the state, under Amendment 666 to the Constitution of Alabama of 1901, as amended, is hereby increased by an additional amount of fifty million dollars (\$50,000,000).
- (b) All of the bonds shall be sold only at public sale or sales, either on sealed bids or at public auction, after such advertisement as may be prescribed by the Bond Commission, to the bidder whose bid reflects the lowest true interest cost to the state computed to the respective maturities of the bonds sold; provided, that if no bid deemed acceptable by the commission is received all bids may be rejected.
- (c) Relative to issuance expenses, contracts, and appointments incurred in connection with the issuance of bonds, the Bond Commission created in Section IX of Amendment 666 to the Constitution of 1901, shall contract with businesses or individuals which reflect the racial and ethnic diversity of the state.
- (d) Bonds issued pursuant to this amendment shall be issued for a maturity of 20 years or less.
- (e) All of the proceeds from the bonds shall be distributed to the Armory Commission of Alabama for plans, construction, and maintenance of Alabama National Guard armories.

(f) In addition to any Oil and Gas Capital Payments received by the Alabama Trust Fund paid into the Alabama Capital Improvement Trust Fund pursuant to Amendment 666, so much as shall be necessary of all Oil and Gas Capital Payments received by the Alabama Trust Fund during any fiscal year shall be paid into the Alabama Capital Improvement Trust Fund to pay the principal and interest on the bonds authorized by this amendment.

(g) In all other respects regarding the Alabama Trust Fund, the terms and provisions of Amendment 666 and Amendment 856 to the Constitution of Alabama of 1901, as amended, are unchanged and remain in full force and effect.

### **Section 11-29-1**

#### **Short title.**

This chapter may be cited as the "County Government Capital Improvement Act."

*(Acts 1986, No. 86-206, p. 269, §1.)*

### **Section 11-29-2**

#### **Legislative findings and declaration of purpose.**

It is the desire of the state to assist in the restoration and improvement of county government buildings, bridges, roads, streets, and other facilities, and to promote the health, safety, and public welfare of the citizens of the state. The making available in the manner provided in this chapter of appropriated moneys to assist the financing of much needed capital improvement projects will assist county government services and promote the welfare and prosperity of the people of the state.

*(Acts 1986, No. 86-206, p. 269, §2.)*

### **Section 11-29-3**

#### **Definitions.**

As used in this chapter, the following words and phrases shall have the following respective meanings:

- (1) FISCAL YEAR. The fiscal year of the state as may from time to time be provided by law.
- (2) FUND. The "County Government Capital Improvement Fund."
- (3) FUND CAPITAL. All assets of the "fund."

(4) STATE. The State of Alabama.

(5) TRUST FUND. "The Alabama Trust Fund" created by Amendment Number 450 of the Constitution of Alabama of 1901.

(6) TRUST INCOME. The net income received by the state, subsequent to the transfer of the initial trust capital by the State Treasurer to the board of trustees of the trust fund, from the investment and reinvestment of all assets of the trust fund, determined in accordance with the provisions of Amendment Number 450 of the Constitution of Alabama of 1901. "Trust income" does not include income which becomes part of the trust capital of the trust fund.

***(Acts 1986, No. 86-206, p. 269, §3.)***

#### **Section 11-29-4**

##### **Fund created.**

For the continuing benefit of the State of Alabama and the citizens thereof, there is hereby created the "County Government Capital Improvement Fund" which shall be funded and administered in accordance with the provisions of this chapter.

***(Acts 1986, No. 86-206, p. 269, §4.)***

#### **Section 11-29-5**

##### **Appropriations.**

Beginning October 1, 1985, in addition to all other appropriations heretofore or hereafter made there is hereby annually appropriated from the General Fund of the state to the County Government Capital Improvement Fund an amount equal to 10 percent of the trust income at such time as the trust income received by the state in the preceding fiscal year equals or exceeds \$60,000,000. Provided, however, no funds shall be appropriated to the County Government Capital Improvement Fund in any fiscal year for which in the previous fiscal year trust income received by the state was less than \$60,000,000.

***(Acts 1986, No. 86-206, p. 269, §5.)***

#### **Section 11-29-6**

##### **Distribution of fund capital; purposes for which counties may use funds.**

The fund capital shall be distributed to the several counties of the state and shall be paid on April 15 of the fiscal year for which each annual appropriation is made as follows:

Part of the funds to be paid to counties that is equal to 45.45 percent of the total of such portion shall be allocated equally among the 67 counties of the state; and the entire residue of the portion to be paid to counties, being an amount equal to 54.55 percent of such portion, shall be allocated among the 67 counties of the state on the basis of the ratio of the population of each county to the total population of the state according to the then next preceding federal decennial census or, prior to the effective date of the 1990 decennial census, any special federal census held in any county subsequent to the effective date of the 1980 federal decennial census and prior to the adoption hereof. Such funds shall only be used by counties for the following purposes:

a. Public buildings; counties may expend such funds for the construction, furnishing, equipping, and renovation of public buildings including, without limitation, jails, courthouses and courthouse annexes, juvenile facilities, and paying rentals to public corporations for the use of public buildings. Such funds may also be expended for the purpose of purchasing land for public buildings.

b. Solid waste; counties may expend such funds for the purchase of land for sanitary landfills, the purchase of solid waste handling and disposal equipment including collection vehicles and landfill compaction equipment, and other solid waste handling and disposal equipment and/or facilities.

c. Public utilities; counties may expend such funds for public water and waste water treatment facilities and drainage facilities. Such expenditures may include the purchase of land and rights-of-way, and the purchase of equipment and supplies necessary for the installation and maintenance of such public facilities.

d. Roads and bridges; up to 50 percent of the funds received by counties may be expended for the construction, maintenance, reconstruction, restoration, or resurfacing of county roads and bridges.

e. Bonds and warrants; counties may expend such funds for the payment of any valid obligation of a county that is evidenced by bonds, notes, warrants, or other instruments now or hereafter authorized by law to be issued for any of the purposes enumerated in clauses a, b, c, and d of this paragraph.

f. Public health; counties may expend funds for the operation and maintenance of the county health department.

g. Pensions and security; counties may expend funds for the operation and maintenance of the county human resources department.

***(Acts 1986, No. 86-206, p. 269, §6; Act 98-499, p. 1075, §1.)***

### **Section 11-29-7**

#### **Distribution and payment of allocations.**

The state Comptroller shall make all allocations of funds and shall make the distribution and payments thereof pursuant to such allocations provided for in this chapter.

*(Acts 1986, No. 86-206, p. 269, §7.)*

### **Section 11-66-1**

#### **Short title.**

This chapter may be cited as the "Municipal Government Capital Improvement Act."

*(Acts 1986, No. 86-234, p. 345, §1.)*

### **Section 11-66-2**

#### **Legislative findings and declaration of purpose.**

It is the desire of the state to assist in the restoration and improvement of municipal government buildings, roads, streets, and other facilities, and to promote the health, safety, and public welfare of the citizens of the state. The making available in the manner provided in this chapter of appropriated moneys to assist the financing of much needed capital improvement projects will assist municipal government services and promote the welfare and prosperity of the people of the state.

*(Acts 1986, No. 86-234, p. 345, §2.)*

### **Section 11-66-3**

#### **Definitions.**

As used in this chapter, the following words and phrases shall have the following respective meanings:

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

(2) FUND. The "Municipal Government Capital Improvement Fund."

(3) FUND CAPITAL. All assets of the "fund."

(4) STATE. The State of Alabama.

(5) TRUST FUND. "The Alabama Trust Fund" created by Amendment Number 450 of the Constitution of Alabama 1901.

(6) TRUST INCOME. The net income received by the state, subsequent to the transfer of the initial trust capital by the State Treasurer to the board of trustees of the trust fund, from the

investment and reinvestment of all assets of the trust fund, determined in accordance with the provisions of Amendment Number 450 of the Constitution of Alabama 1901. "Trust income" does not include income which becomes part of the trust capital of the trust fund.

***(Acts 1986, No. 86-234, p. 345, §3.)***

#### **Section 11-66-4**

##### **Fund created.**

For the continuing benefit of the State of Alabama and the citizens thereof, there is hereby created the "Municipal Government Capital Improvement Fund" which shall be funded and administered in accordance with the provisions of this chapter.

***(Acts 1986, No. 86-234, p. 345, §4.)***

#### **Section 11-66-5**

##### **Appropriations.**

Beginning October 1, 1986, in addition to all other appropriations heretofore or hereafter made there is hereby annually appropriated from the General Fund of the state to the Municipal Government Capital Improvement Fund an amount equal to 10 percent of the trust income at such time as the trust income received by the state in the preceding fiscal year equals or exceeds \$60,000,000. In any fiscal year in which the trust income received by the state in the preceding fiscal year falls below \$60,000,000, no funds shall be appropriated to the Municipal Government Capital Improvement Fund until such time as the trust income equals or exceeds \$60,000,000.

***(Acts 1986, No. 86-234, p. 345, §5.)***

#### **Section 11-66-6**

##### **Distribution of fund capital.**

The fund capital shall be distributed to the incorporated municipalities of the state and shall be paid on April 15 of the fiscal year for which each annual appropriation is made as follows:

(1) Each incorporated municipality in the state with a population of less than 1,000 shall receive \$1,000; each incorporated municipality in the state with a population of 1,000 or more shall receive \$2,500.

(2) The residue of the portion to be paid to the incorporated municipalities in the state shall be distributed among the incorporated municipalities in the state on the basis of the ratio of the population of each such municipality to the total population of all the incorporated municipalities in the state according to the next preceding federal decennial census, or in the case of a

municipality incorporated subsequent to the said federal decennial census, the official census taken upon incorporation.

Each municipality shall upon receipt of its share deposit same in a special account and shall not commingle such funds with other revenues of the municipality. The share of each municipality shall be expended solely for capital improvements and the renovation of capital improvements determined by the municipal governing body. The governing body of each municipality may use such share to finance bond or warrant issues for capital improvements and the renovation of capital improvements and may pledge such share to retire the principal and interest of such bonds or warrants.

***(Acts 1986, No. 86-234, p. 345, §6; Act 98-499, p. 1075, §2.)***

### **Section 11-66-7**

#### **Payment of allocations.**

The State Comptroller shall make all allocations of funds and shall make the distribution and payments thereof pursuant to such allocations provided for in this chapter.

***(Acts 1986, No. 86-234, p. 345, §7.)***