

Report on the

**Alabama Trust Fund
State of Alabama
Montgomery, Alabama**

October 1, 2018 through September 30, 2019

Filed: May 15, 2020



**Department of
Examiners of Public Accounts**

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Rachel Laurie Riddle, Chief Examiner



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Honorable Rachel Laurie Riddle
Chief Examiner of Public Accounts
Montgomery, Alabama 36130

Dear Madam:

An examination was conducted on the Alabama Trust Fund, Montgomery, Alabama, for the period October 1, 2018 through September 30, 2019. Under the authority of the *Code of Alabama 1975*, Section 41-5A-19, I hereby swear to and submit this report to you on the results of the examination.

Respectfully submitted,

Cindy McIntyre
Examiner of Public Accounts

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Table of Contents

	<i>Page</i>
Summary	A
Contains items pertaining to state legal compliance, Alabama Trust Fund operations and other matters.	
Additional Information	1
Exhibit #1 Board Members – a listing of Board members of the Alabama Trust Fund.	2



Department of
Examiners of Public Accounts

SUMMARY

**Alabama Trust Fund
October 1, 2018 through September 30, 2019**

The Alabama Trust Fund (ATF) was established and operates under the authority of the *Constitution of Alabama 1901, Amendment 450*. The ATF was established as an irrevocable permanent trust fund for the continuing benefit of the State of Alabama and its citizens.

The initial trust capital of the ATF consisted of oil and gas capital payments received as the result of sealed bids awarded on August 14, 1984. *Amendment 450* defined “oil and gas capital payments” as follows: “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...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.” *Amendment 450* provided for the ATF to receive 99% of all oil and gas capital payments received after August 14, 1984, and for the Lands Division of the Department of Conservation and Natural Resources to receive 1% of the oil and gas capital payments.

There have been numerous *Amendments* to the *Constitution of Alabama 1901* affecting the ATF since *Amendment 450*. These have clarified the types of investments, modified distributions, and authorized bonds, etc. The following are the *Amendments* relating to the ATF:

- *Amendment 488*
- *Amendment 666*
- *Amendment 668*
- *Amendment 709*
- *Amendment 796*
- *Amendment 803*
- *Amendment 856*
- *Amendment 887*

Because some of these *Amendments* have modified the distributions of the oil and gas capital payments to include allowing distributions of the corpus or capital, this required a change in classification in the State's Comprehensive Annual Financial Report (CAFR) from a Permanent Fund to a Special Revenue Fund in order to comply with Generally Accepted Accounting Principles.

There have also been numerous Attorney General's Opinions affecting the ATF. Some of the most significant ones are listed below:

- Opinion Number 86-239
- Opinion Number 2000-006
- Opinion Number 2004-042
- Opinion Number 2005-027
- Opinion Number 2006-152
- Opinion Number 2008-046
- Opinion Number 2010-060
- Opinion Number 2010-098
- Opinion Number 2011-025

The ATF is under the management and control of a Board of Trustees established by *Amendment 450*, and all powers necessary or appropriate for the management and control of the ATF are vested solely in the Board. These provisions in the law have not changed since *Amendment 450* was ratified. The nine member Board of Trustees consists of the Governor, the State Treasurer, the Director of Finance, three Board members appointed by the Governor, two Board members appointed by the Lieutenant Governor, and one Board member appointed by the Speaker of the House of Representatives. Each Board member may be reimbursed for actual expenses incurred in the performance of his or her duties related to the ATF. The Governor, State Treasurer, and the Director of Finance serve as ex-officio Board members, and the terms of the ex-officio Board members run concurrently with the terms in their respective offices. The term of office for each appointed Board member is six years. The Governor is the chairman and presiding officer of the Board. The Director of Finance is the vice-chairman, and the State Treasurer is the secretary. A majority of the Board members constitutes a quorum for the transaction of business by the Board, and decisions are made on the basis of a majority of the quorum present and voting, with each Board member having a single vote. The Board may appoint such other officers to perform such duties as the Board deems necessary or appropriate.

To the extent practicable, the Board must keep all moneys invested in eligible investments to produce the greatest trust income while preserving the ATF capital. The Board has complete discretion in making decisions as to how and when investments are made. The only restriction on the Board pertaining to the investment of ATF moneys is that investments must be made with the same judgment and care that an institutional investor of the highest standard of prudence, intelligence and financial expertise would exercise under the circumstances prevailing at the time, not for the purpose of speculative profit, but for the generation of optimum income while preserving the safety and permanence of the trust.

To the extent appropriate, the Board utilizes the Office of the State Treasurer in the administration of the ATF, including the keeping of the accounting and investment records, the management of bank accounts, the transfer of funds, and the safekeeping of securities evidencing investments. Also, the Board uses financial custodians to safekeep the ATF investments managed by investment professionals. The custodians maintain these investment records for the ATF.

Amendment 450, Section 5(d) to the *Constitution of Alabama 1901*, requires the Board to have an annual audit of the ATF performed in accordance with applicable accounting principles. The ATF is part of the primary government of the State of Alabama; it is reported in the Comprehensive Annual Financial Report (CAFR) as a major governmental fund. The Department of Examiners of Public Accounts performed the required audit of the ATF in conjunction with the annual audit of the CAFR. An unmodified opinion was issued on the basic financial statements, with separate reference to each major fund which included the ATF. This means that the ATF's financial statements as shown in the CAFR present fairly, in all material respects, its financial position and the results of its operations for the fiscal year ended September 30, 2019. The CAFR audit report can be obtained from the Examiners of Public Accounts' website, www.examiners.alabama.gov, under "Audit Reports." The report number for the fiscal year 2019 CAFR is 20-338.

Additionally, we performed tests to determine whether management of the ATF complied with applicable laws and regulations in relation to operations of the ATF. Tests performed during the audit did not disclose any significant instances of noncompliance with applicable state and local laws and regulations.

Additional Information

Board Members
October 1, 2018 through September 30, 2019

Board Members		Term Expires
Hon. Kay Ivey (1)	Chairman	2023
Hon. Kelly Butler (1)	Vice-Chairman	Indefinite
Hon. John McMillan	Ex-Officio	2023
Hon. Young Boozer	Ex-Officio	2019
Hon. Stacy Faison	Member	2024
Hon. John Hornsby	Member	2023
Hon. Daniel Hughes, Jr.	Member	2020
Hon. Edgar Pruitt	Member	2022
Hon. Sandra Sims-deGraffenreid, Ph.D.	Member	2021
Hon. Guice Slawson, Jr.	Member	2025
(1) Ex-Officio		