



GUIDE TO THE ISSUES

The State Budget: Earmarks

Introduction

Originally, an “earmark” was a sign of ownership—“a mark in the ear of a sheep or other animal.”¹ Today, it is a sign of bad fiscal policy.

Earmarking is the dedication of certain tax revenues to the financing of specific programs or agencies.² When revenues are earmarked, they bypass the normal budgetary process and are automatically paid to the programs or agencies to which they are dedicated.³

This *Guide* explains Alabama’s earmarking problem, and how to solve it.

Background

When state legislators convene each year in Montgomery, the Alabama Constitution requires them to balance the budget.⁴ Alabama’s budget consists, in effect, of two separate budgets:

1. THE STATE GENERAL FUND (SGF), which finances most non-education-related functions of the state government (Medicaid, law enforcement, etc.); and
2. THE EDUCATION TRUST FUND (ETF), which finances most education-related functions of the state government (K–12 education, colleges and universities, etc.).⁵

The SGF and ETF amassed \$7.95 billion of total revenue in 2016.⁶ Legislators, however, were unable to prioritize the spending of that revenue—money taken from the pocketbooks of hardworking Alabamians—in a way that would best meet the needs of the state and its people. Instead, legislators were only able to decide how 7% of that revenue was spent—the other 93% was earmarked and, therefore, beyond their control.⁷

A recent legislative report put the situation in context:

ISSUE SNAPSHOT

Alabama has an excessive amount of earmarking in its state budget:

- ★ Currently, 93% of Alabama’s tax dollars are earmarked.
- ★ State officials only have discretion over how to spend 7% of Alabama’s tax dollars.
- ★ This makes it impossible for taxpayer money to be spent efficiently and effectively.

RECOMMENDATIONS

Alabama should drastically reduce its excessive amount of earmarking by:

1. Setting a target of 25% or less earmarking in Alabama’s budget; and
2. Eliminating all earmarks that do not align with Alabama’s needs and priorities.

“Imagine that you only had discretion over 7% of your personal income—this is the situation that the [Alabama] Legislature faces each year when trying to balance the budget.”⁸

The average amount of earmarking in the budgets of other states is less than 25%.⁹ At 93%, Alabama’s earmarking is by far the highest of any state, with Michigan’s 63% a very distant second.¹⁰ While the amount of earmarking in Alabama’s budget has remained consistently high over the past several decades,¹¹ there has been an “overwhelming trend of states moving to lower [the amount of] earmarks as a percentage of total budget revenue.”¹²



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The excessive amount of earmarking in Alabama’s budget denies our state the financial flexibility that is necessary for taxpayer money to be spent efficiently and effectively.¹³ This is a problem that demands examination—and action.

Earmarking in Alabama: A Brief History

In 1927, Governor Bibb Graves signed into law legislation that turned the state budget of Alabama into what is known as a “bifurcated budget”—that is, two separate budgets.¹⁴ Before, Alabama had one major budget, the State General Fund, which was used to finance most governmental functions.¹⁵ After, Alabama had a second major budget, the Education Trust Fund, which was dedicated to financing public education.¹⁶ The legislation not only established the ETF as a new budget “separate and apart” from the SGF, but it also created and earmarked a number of new taxes for the ETF—revenues restricted “for educational purposes only.”¹⁷

Thus began a trend of “powerful appropriation lobbies”—governmental agencies and special interests—demanding that the legislature earmark revenues, or *more* revenues, for them.¹⁸ The result was an abundance of new taxes and tax increases, with nearly all of these tax revenues earmarked.¹⁹ There was even re-earmarking of existing earmarking, such as when—pressed by the education lobby²⁰—a constitutional amendment was adopted that ensured that the vast majority of the state income tax would be used “for the payment of public school teachers salaries only.”²¹

By the early 1940s, Alabama’s budget was 90% earmarked.²² Earmarking posed the “most serious obstacle to an effective meeting of fiscal crises in Alabama,” one scholar noted at the time.²³ History has proven him correct.

Earmarking has caused one budget crisis after another in Alabama, and continues to do so today.²⁴

Unearmarking in Alabama: A Brief History

Over the years, multiple state leaders have sought to reform Alabama’s budgetary system, with *unearmarking*

often being a key component.²⁵

In 1979, Governor Fob James proposed an entirely new state constitution that included a provision giving the legislature authority to “earmark or unearmark future taxes as it sees fit,” without having to face the hurdle of amending the constitution to do so.²⁶

In 1991, under Governor Guy Hunt, the Alabama Commission on Tax and Fiscal Reform was created.²⁷ Earmarking, the commission found, “unduly restricts the legislature in deciding how to meet the many needs of the state,” and fosters misleading budgetary practices as “agencies that are not traditionally thought of as being concerned with education try to characterize part of their activity as educational in order to participate in the [Education Trust Fund].”²⁸

In 2003, Governor Bob Riley introduced a tax-reform plan known as “Amendment One.”²⁹ All of the tax revenues generated under the plan would have been unearmarked.³⁰

After the Republican takeover of the Alabama Legislature in 2011, state leaders began taking another hard look at earmarking. One legislator described Alabama’s earmarks as “decades-old, money-hoarding schemes that lobbyists locked into our budgets,” and argued that the removal of those earmarks is “the only way to avoid new taxes . . . and set priorities based on need.”³¹ Other legislators voiced similar sentiments.³²

In 2015, multiple members of both houses of the Alabama Legislature sponsored legislation³³ that would have unearmarked all state revenues.³⁴ Later that same year, other legislation³⁵ was introduced that would have unearmarked “an estimated \$508 million” of state revenues.³⁶ In 2016, more legislation³⁷ was introduced that would have likewise unearmarked hundreds of millions of dollars of state revenues.³⁸

At the end of the 2016 First Special Session of the Alabama Legislature, the House and Senate created the Joint Legislative Task Force on Budget Reform³⁹ to study Alabama’s budget and recommend reforms.⁴⁰ One



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of the task force's focuses is on "unearmarking funds in order to provide for greater legislative oversight and appropriating flexibility."⁴¹ The task force released an interim report in May 2017,⁴² and will release its final report—which will include "a comprehensive plan to solve the fiscal woes of our state"—by January 2018.⁴³

Analysis

The revenues that make up Alabama's budget—that is, the revenues of the State General Fund (SGF) and the Education Trust Fund (ETF)—can be divided into two categories: discretionary revenue and earmarked revenue.⁴⁴ Discretionary revenue is money that the Alabama Legislature has the freedom to decide how to spend.⁴⁵ Earmarked revenue is money that the Alabama Legislature does not have the freedom to decide how to spend;⁴⁶ instead, the money must be spent according to dictates found in state law—in state statutes or in the state constitution.⁴⁷ Half of all earmarks are statutory, meaning that they can be modified by the legislature simply passing a bill.⁴⁸ The other half of all earmarks are constitutional, meaning that they can only be modified by the more difficult process of amending the Alabama Constitution.⁴⁹

Defenses of Earmarking in Alabama

Alabama's excessive earmarking is often rationalized in one of two ways: as a method to safeguard funding for certain governmental functions (e.g., public education); or as a method of linking the costs and benefits of certain governmental functions (e.g., the dedication of taxes on gasoline, which drivers buy, to the construction and maintenance of roads, which drivers benefit from).⁵⁰

In practice, however, earmarking is often simply a way to "sell" unpopular taxes.⁵¹ For example, if the legalization of recreational marijuana were put on the ballot, the people of Alabama would overwhelmingly vote against it. But, if a portion of the tax revenues resulting from the legalization of recreational marijuana were promised to be earmarked to provide free college tuition for all young people, many "no" votes might change to "yes" votes.

Criticisms of Earmarking in Alabama

Approximately 93% of Alabama's budget consists of earmarked revenues.⁵² Only 7% of Alabama's budget consists of discretionary revenues.⁵³ To make matters worse, those discretionary revenues tend to stay the same and not grow—even as the costs of government steadily climb and, in some cases, skyrocket.⁵⁴ The ETF is largely fed by "growth revenues": revenues that tend to grow (and to grow at an especially rapid pace during times of economic expansion) from one year to the next, ensuring an increase over time.⁵⁵ The SGF is largely fed, or starved, by "flat or declining revenue sources."⁵⁶

Earmarked revenues rarely receive the scrutiny that all taxpayer dollars deserve.⁵⁷ Because lawmakers do not have to decide how to spend earmarked revenues, there is no incentive to sift through them, line by line, as they do with revenues that are annually appropriated. Given this and the fact that only 7% of tax revenues are discretionary, lawmakers are largely unfamiliar with—except in a very broad sense—how most tax dollars are being spent.

In short, taxpayer money in Alabama is not being spent in a way that best serves the needs and priorities of the state.⁵⁸ A vast majority of Alabama's budget is outside the immediate control and scrutiny of state officials. The small amount of Alabama's budget that state officials *can* control consists of revenues that do not grow. As a result, it is impossible for state officials to efficiently or effectively manage Alabama's budget—a situation that has caused the state to suffer continuous budgetary crises.⁵⁹

Recommendations

As discussed above, Alabama has, in effect, two separate state budgets: the State General Fund (SGF) and the Education Trust Fund (ETF). The ETF is itself one large earmark: in general, all of the ETF's revenues must be spent on education-related functions of the state government.⁶⁰ Within the ETF, however, there are what might be termed *specifically earmarked revenues* and



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semi-discretionary revenues: that is, revenues that are earmarked so that they must be spent in a specific way on education-related functions (e.g., the mandate that revenues from the state income tax be used “for the payment of public school teachers salaries only”); and revenues that may be spent with some discretion, so long as they are spent on education-related functions (e.g., the ability of lawmakers to determine the exact distribution of funding among the state’s various colleges and universities).⁶¹ If Alabama’s budget were consolidated, and all of the semi-discretionary revenues of the ETF became *fully* discretionary revenues, then the percentage of Alabama’s budget that is earmarked would fall from 93% to 72%.⁶² This is the percentage of specifically earmarked revenues in Alabama’s budget at present.⁶³ Although a consolidated state budget would be ideal, the following recommendations reflect Alabama’s present reality of two separate state budgets.

Recommendation No. 1

Reduce the Earmarking in Alabama’s Budget by Setting a Target Amount of 25% or Less

There has been an “overwhelming trend of states moving to lower [the amount of] earmarks as a percentage of total budget revenue” in recent years.⁶⁴ Today, the average amount of earmarking in the budgets of other states is less than 25%.⁶⁵ This amount is a reflection of a fact that all states, including Alabama, have painfully learned over the years: a high amount of earmarking is bad fiscal policy.

Accordingly, Alabama should aim for an amount of earmarking in its budget that is 25% or less, using specifically earmarked revenues as the measure.⁶⁶ Specifically earmarked revenues account for 72% of Alabama’s budget, meaning that at least 47% of all existing earmarks would need to be eliminated to reach the target amount.⁶⁷

To reduce earmarking to 25% or less, earmarking in each of Alabama’s two separate budgets—the SGF and the ETF—could simply be reduced to 25% or less.⁶⁸ But the target amount could be reached in any number of ways, such as by reducing earmarking in the SGF to 40% and

earmarking in the ETF to 10%—which would likewise reduce total earmarking in Alabama’s budget to 25%.⁶⁹

Recommendation No. 2

Reduce the Earmarking in Alabama’s Budget by Eliminating Earmarks Based on Needs and Priorities

A target amount of 25% or less earmarking in Alabama’s budget should not only be set—it should be steadfastly pursued. This requires the evaluation and elimination of earmarks based on the needs and priorities of the state. Here is how this can be accomplished in five steps, which would need to be continually repeated:

1. Evaluate all earmarked revenues based on the needs and priorities of Alabama.
2. Rate all agencies and commissions as essential or nonessential based on the needs and priorities of Alabama.
3. Eliminate all earmarks found that are:
 - a. Unaligned with the needs and priorities of Alabama; or
 - b. Dedicated to nonessential agencies or commissions.
4. Conduct a line-by-line evaluation of all revenues earmarked for essential agencies and commissions, and eliminate all earmarks that do not align with the needs and priorities of Alabama.
5. Convert constitutional earmarks that are being retained into statutory earmarks, enabling them to be subject to legislative elimination if they ever fail to align with the needs and priorities of Alabama.

Conclusion

The excessive amount of earmarking in Alabama’s budget denies our state the financial flexibility that is necessary for taxpayer money to be spent efficiently and effectively. By implementing the recommendations of this *Guide*, state officials would be able to shoulder the responsibility of Alabama’s budget—and start spending taxpayer money so that it best meets Alabama’s needs and priorities.



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¹ “Earmark,” *The Oxford English Dictionary* (2nd ed. 1989). This definition dates back to the early sixteenth century. *Id.* According to William Safire, “The application of the term to money or other property set aside or limited to a particular purpose arose in England in the nineteenth century but seems not have become common in the U.S. until the opening decades of the twentieth.” William Safire, *Safire’s Political Dictionary* 204 (5th ed. 2008). An early usage example:

When now-a-days we say that “money has no ear-mark,” we are alluding to a practice which in all probability played a large part in ancient law. Cattle were ear-marked or branded, and this enabled their owner to swear that they were his in whosoever hands he might find them. The legal supposition is, not that one ox is indistinguishable from another ox, but that all oxen, or all oxen of a certain large class, are equivalent. The possibility of using them as money has rested on this supposition.

Frederick Pollock & Frederic William Maitland, *2 The History of English Law Before the Time of Edward I*, at 151–52 (2nd ed. 1898) (footnote omitted).

² See “Earmark,” *Black’s Law Dictionary* (10th ed. 2014); James M. Buchanan, “The Economics of Earmarked Taxes,” *71 Journal of Political Economy* 457, 457–58 (1963).

³ See generally Joseph C. Pilegge, Jr., *Taxing and Spending: Alabama’s Budget in Transition* 64–66 (1978). Earmarks exist as either statutory or constitutional provisions in Alabama law. *Id.* at 64.

⁴ See Ala. Const. art. XI, § 213; see also *Hall v. Blan*, 148 So. 601, 607 (Ala. 1933).

⁵ “State General Fund” and “Education Trust Fund” are the official names of Alabama’s two budgets. See, e.g., Ala. Const. art. XIV, § 260.02 (citing both budgets by name); see also *infra* note 16 (noting an official change to the name of one of the budgets in the past). For background on why Alabama has two budgets, see generally Ira Harvey, *A History of Educational Finance in Alabama* 87–174 (1989) (giving a detailed history of the genesis of the ETF). Although the SGF and ETF are the two primary operating funds in Alabama, other operating funds also exist. See “Operating Funds,” Executive Budget Office, <http://budget.alabama.gov/pages/opfunds.aspx> [<http://perma.cc/CV9P-A8VQ>] (last visited Aug. 2, 2017).

⁶ See Kirk Fulford, Legislative Fiscal Office, *Presentation to the Legislature on Alabama’s Financial Condition* 6, 20 (2017), <http://www.lfo.state.al.us/PDFs/Presentations/LFO.Financial.Condition.2017.pdf> [<http://perma.cc/23R4-RWZ4>] (reporting that, for fiscal year 2016, “total receipts” were \$1.85 billion for the SGF and \$6.1 billion for the ETF).

⁷ Joint Task Force on Budget Reform, *Interim Report on Budget Reform* 8 (2017) [hereinafter *Interim Report of the Joint Legislative Task Force on Budget Reform*], <http://www.lfo.state.al.us/pdfs/jtf.may.2017.report.pdf> [<http://perma.cc/7PBF-T773>]. In 2015, Alabama earmarked approximately 86% of state revenues, excluding federal funds; and approximately 93% of state revenues, including federal funds. Legislative Fiscal Office, *State Budget Process and State Revenue Distributions* 22 (2016), http://lfo.state.al.us/pdfs/presentations/state_budget_process-task_force_9.28.16.pdf [<http://perma.cc/NV67-9KEN>].

⁸ *Interim Report of the Joint Legislative Task Force on Budget Reform, supra* note 7, at 8. Another helpful illustration was given by Bob Riley, the former governor of Alabama, when he was a gubernatorial candidate:

Riley often used the example of a family specifically earmarking a portion of its income to a family vacation yet refusing to dip into those funds when their mortgage was due. The result, of course, is that the family loses its home but gets to go on a vacation to Disney World.

Mike Hubbard with David Azbell, *Storming the State House: The Campaign That Liberated Alabama from 136 Years of Democrat Rule* 81 (2012).

⁹ Arturo Pérez, National Conference of State Legislatures, *Earmarking State Taxes* 5 (2008), <http://www.ncsl.org/documents/fiscal/earmarking-state-taxes.pdf> [<http://perma.cc/57N6-GKDV>].

¹⁰ *Interim Report of the Joint Legislative Task Force on Budget Reform, supra* note 7, at 8 (giving the earmarking percentage, at present, for Alabama’s state budget); Citizens Research Council of Michigan, *Earmarking State Tax Revenues: Tying Policymakers’ Hands or Protecting Policy Priorities?* 1 (2015), http://crcmich.org/PUBLICAT/2010s/2015/earmarking_state_tax_revenues-2015.pdf [<http://perma.cc/3VNX-E4TX>] (giving the earmarking percentage, in 2014, for Michigan’s state budget). See generally Pérez, *supra* note 9, at 5 (surveying the percentage of tax revenues earmarked in each of the fifty state budgets).

¹¹ See Pérez, *supra* note 9, at 5 (reporting that, since 1954, the lowest percentage of earmarking in Alabama’s budget was 84%).

¹² *Interim Report of the Joint Legislative Task Force on Budget Reform, supra* note 7, at 26. The task force identified Florida, Georgia, Louisiana, South Carolina, and Texas as examples of “states that have trended toward a lowering of earmarks.” *Id.*

¹³ See generally J. Michael Allen III & Jamison W. Hinds, “Alabama Constitutional Reform,” *53 Alabama Law Review* 1, 12–13 (2001); Katherine Barrett & Richard Greene, “Pots of Money,” *Governing*, Oct. 2013, at 60.

¹⁴ For background on the enactment of the bill, known as the “Tunstall Revenue Bill,” see generally Harvey, *supra* note 5, at 130–32, 401–03. For the bill itself (the version that was ultimately enacted), see Act of July 22, 1927, No. 163, § 2-K, 1927 Ala. Acts 139, 148 (codified as amended at Ala. Code § 40-1-31). For background on Alabama’s bifurcated budget, see generally Katherine Green Robertson, “Budget Basics: The Facts About Alabama’s Budget System,” Alabama Policy Institute (Sept. 4, 2014), <http://www.alabamapolicy.org/budget-basics-facts-alabamas-budget-system/> [<http://perma.cc/3X7Y-79VZ>].

¹⁵ See Harvey, *supra* note 5, at 127–28.

¹⁶ See *id.* at 130–32. The education budget was originally named the “Alabama Special Educational Trust Fund.” See *id.* It has since been officially renamed the “Education Trust Fund.” See Act of June 26, 1995, No. 95-264, § 1, 1995 Ala. Acts 473, 473–74 (codified at Ala. Code § 16-13-16).

¹⁷ Act of July 22, 1927, No. 163, § 2-K, 1927 Ala. Acts 139, 148 (codified as amended at Ala. Code § 40-1-31); see also Harvey, *supra* note 5, at 131–32 (summarizing the taxes imposed in other sections of the same statute). This was not, however, the first time that taxes had been earmarked in Alabama. See Howard P. Walthall, Sr., “A Doubtful Mind: Understanding Alabama’s State Constitution,” *35 Cumberland Law Review* 7, 43 (2005) (giving 1868 as the year that the first earmark appeared in Alabama law).

¹⁸ Joseph M. Ray, *Alabama’s State Dollar* 99–100 (1942).

¹⁹ See *id.* at 92–93.

²⁰ See Susan Pace Hamill, “Constitutional Reform in Alabama: A Necessary Step Towards Achieving a Fair and Efficient Tax Structure,” *33 Cumberland Law Review* 437, 439 n. 4 (2003).

²¹ Amendment 61 was proposed by Act of May 21, 1947, No. 3, 1947 Ala. Acts 8, and proclaimed ratified on September 11, 1947. See Ala. Const. art. XI, § 211.02 note (History); see also Harvey, *supra* note 5, at 563 (noting that the amendment “re-earmarked income tax to the Property Tax Relief Fund and to the [Education Trust Fund]”). Today, “[a]lmost all state income taxes are earmarked for payment of teacher salaries.” *Lynch v. State*, No. 08-S-450-NE, 2011 U.S. Dist. LEXIS 155012, at *210 (N.D. Ala. Nov. 7, 2011) (quoting Parties’ Statement of Agreed Facts ¶ 22). Experts on the Alabama Constitution have noted that the adoption of Amendment 61 “signaled the beginning of education supremacy among the functions of Alabama state government.” William H. Stewart, *The Alabama State Constitution* 153 (2nd ed. 2016).

²² See Ray, *supra* note 18, at 10.

²³ *Id.* at 99.

²⁴ Public Affairs Research Council of Alabama, PARCA Report No. 46, *How Alabama’s Taxes Compare* (2006) (“Because of the extensive earmarking of state tax revenues, budget crises are common”); see also *infra* note 59 and accompanying text.



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25 The push for unearmarking began in the mid-1970s. See generally Harvey, *supra* note 5, at 266–67.

26 Allen & Hinds, *supra* note 13, at 19.

27 *Id.* at 23–24. For analysis of the commission’s plan, see *id.* at 24–27. Later, also under Governor Guy Hunt, another group—the Tax Reform Task Force—was created for a similar purpose. See *id.* at 27–28. For analysis of the task force’s plan, see *id.* at 28–30.

28 Alabama Commission on Tax and Fiscal Policy Reform, *Report of the Alabama Commission on Tax and Fiscal Policy Reform* 16 (1991), available at <http://parca.samford.edu/taxes/Report%20of%20the%20Alabama%20Commission%20on%20Tax%20and%20Fiscal%20Policy%20Reform.pdf> [<http://perma.cc/9RF4-6Y52>].

29 Act of June 7, 2003, No. 2003-78, 2003 Ala. Acts 123. The plan included “a variety of tax and non-tax reforms.” Walthall, *supra* note 17, at 14–15 (footnotes omitted). For a survey of the plan’s reforms, see *id.* at 15 nn. 23–24.

30 Walthall, *supra* note 17, at 15.

31 Will Ainsworth, Opinion, “Alabama Doesn’t Need Higher Taxes, Just Fewer Earmarks,” *AL.com* (Apr. 20, 2015), http://www.al.com/opinion/index.ssf/2015/04/alabama_doesnt_need_higher_tax.html [<http://perma.cc/2A2J-ZUS6>].

32 See, e.g., Mary Sell, “Lawmakers Eyeing Earmarks During Budget Crunch,” *Decatur Daily* (Apr. 20, 2015), http://www.decaturdaily.com/news/capital_notes_and_quotes/lawmakers-eyeing-earmarks-during-budget-crunch/article_5fb67f42-4ccc-5201-a123-47e8b7e028ef.html [<http://perma.cc/G7LH-VPNJ>].

33 See H.R. 700, 2015 Leg., Reg. Sess. (Ala. 2015) (as introduced, May 26, 2015), <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2015RS/PrintFiles/HB700-int.pdf> [<http://perma.cc/7E63-8J2N>]; S. 502, 2015 Leg., Reg. Sess. (Ala. 2015) (as introduced, May 21, 2015), <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2015RS/PrintFiles/SB502-int.pdf> [<http://perma.cc/6VAF-V7LZ>]. Both bills proposed identical constitutional amendments. Compare H.R. 700, with S. 502.

34 See Fiscal Note on S. 502, 2015 Leg., Reg. Sess. (Ala. 2015) (as introduced, May 21, 2015), <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2015RS/FiscalNotes/FN-33785.htm> [<http://perma.cc/8AE3-BK7G>].

35 See H.R. 46, 2015 Leg., 1st Spec. Sess. (Ala. 2015) (as passed by House, Aug. 5, 2015), <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2015FS/PrintFiles/HB46-eng.pdf> [<http://perma.cc/YNU3-9G72>].

36 Fiscal Note on H.R. 46, 2015 Leg., 1st Spec. Sess. (Ala. 2015) (as passed by House, Aug. 5, 2015), <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2015FS/FiscalNotes/FN-34180.htm> [<http://perma.cc/WW4G-HYTW>].

37 See S. 15, 2016 Leg., Reg. Sess. (Ala. 2016) (as introduced, Feb. 2, 2016), <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2016RS/PrintFiles/SB15-int.pdf> [<http://perma.cc/8FR9-2SJB>].

38 Fiscal Note on S. 15, 2016 Leg., Reg. Sess. (Ala. 2016) (as introduced, Feb. 2, 2016), <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2016RS/FiscalNotes/FN-34513.htm> [<http://perma.cc/9F82-5L4Y>].

39 This is the official name of the task force (the “Joint Legislative Task Force on Budget Reform”). See sources cited *infra* note 40. The task force sometimes uses a slightly shortened version of its official name (the “Joint Task Force on Budget Reform”) to refer to itself. See *Interim Report of the Joint Legislative Task Force on Budget Reform*, *supra* note 7, at 1.

40 See H.R.J. Res. 62, 2016 Leg., 1st Spec. Sess. (Ala. 2016) (enacted), <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2016FS/PrintFiles/HJR62-enr.pdf> [<http://perma.cc/J65H-SEP5>] (creating the Joint Legislative Task Force on Budget Reform to “examine the structure and design of the state budgeting process and make recommendations for long-term budget and tax system reforms”); see also S.J. Res. 52, 2017 Leg., Reg. Sess. (Ala. 2017) (enacted), <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2017RS/PrintFiles/SJR52-enr.pdf> [<http://perma.cc/CK78-NG9P>] (extending the existence of the Joint Legislative Task Force on Budget Reform).

41 Ala. S.J. Res. 52.

42 See generally *Interim Report of the Joint Legislative Task Force on Budget Reform*, *supra* note 7.

43 *Id.* at 3. The task force’s final report is due by the “fifth legislative day” of the 2018 Regular Session, which commences on January 9, 2018. See Ala. S.J. Res. 52 (setting the deadline for the final report of the Joint Legislative Task Force on Budget Reform); Ala. Code § 29-1-4 (specifying the start dates for sessions of the Alabama Legislature); see also Opinion of the Justices No. 228, 336 So. 2d 164, 166 (Ala. 1976) (illuminating the definition of the term “legislative day”).

44 See *Interim Report of the Joint Legislative Task Force on Budget Reform*, *supra* note 7, at 8 (distinguishing between revenues that are “earmarked” and revenues that legislators have “discretion over”); see also Arise Citizens’ Policy Project, *The Alabama Tax and Budget Handbook* 5 (2nd ed. 2015), http://arisecitizens.org/index.php/component/docman/doc_view/1154-the-alabama-tax-budget-handbook-2015?Itemid=44 [<http://perma.cc/6285-DMMM>].

45 See generally “Discretionary,” *Black’s Law Dictionary* (10th ed. 2014).

46 See generally *supra* notes 1–3 and accompanying text.

47 See generally Legislative Fiscal Office, *supra* note 7, at 22.

48 *Interim Report of the Joint Legislative Task Force on Budget Reform*, *supra* note 7, at 9. For the constitutional requirements for the passage of a bill, see Ala. Const. art. IV, §§ 45, 61–63.

49 *Interim Report of the Joint Legislative Task Force on Budget Reform*, *supra* note 7, at 9. The Alabama Constitution “contains two procedures, other than the convention procedure, for amending the document.” Hunt v. Decatur City Board of Education, 628 So. 2d 393, 396 (Ala. 1993) (citation omitted). Amendment 24 sets forth the general procedure for proposing and adopting a constitutional amendment. See Ala. Const. art. XVIII, § 284. Amendment 425, as amended by Amendment 555, sets forth the procedure for proposing and adopting a constitutional amendment affecting only one county. See Ala. Const. art. XVIII, § 284.01. For the convention procedure, see Ala. Const. art. XVIII, § 286. “These provisions are the exclusive means for amending the document, for the power to alter the constitution must be explicitly conferred in the instrument itself.” *Decatur City Board of Education*, 628 So. 2d at 396.

50 See Pilegge, *supra* note 3, at 66.

51 See *id.*

52 *Interim Report of the Joint Legislative Task Force on Budget Reform*, *supra* note 7, at 8.

53 *Id.*

54 Compare *id.* at 6 (graphing State General Fund revenues), with Clinton P. Carter, Alabama Department of Finance, *Condition of the State General Fund and Education Trust Fund (FY2018)*, at 34 (2017), <http://budget.alabama.gov/pdf/2017/LegislativePresentationClintonCarter-2.7.17.pdf> [<http://perma.cc/594Q-MNZS>] (graphing State General Fund expenditures). Among the reasons given for the creation of the Joint Legislative Task Force on Budget Reform are “less than adequate funding in essential functions of government” and the “tremendous growth in Medicaid.” *Interim Report of the Joint Legislative Task Force on Budget Reform*, *supra* note 7, at 1. In 1994, Medicaid and Corrections accounted for 33% of the SGF. See Fulford, *supra* note 6, at 24. In 2017, Medicaid and Corrections accounted for 60% of the SGF. See *Id.*



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55 See *Interim Report of the Joint Legislative Task Force on Budget Reform*, *supra* note 7, at 8–9. But see Harvey, *supra* note 5, at 408 (“Of course, during recessionary periods, these taxes have been ‘soft’ and have not produced the guaranteed receipts of the property tax.”).

56 *Interim Report of the Joint Legislative Task Force on Budget Reform*, *supra* note 7, at 9.

57 See Pilegge, *supra* note 3, at 65.

58 See generally *Interim Report of the Joint Legislative Task Force on Budget Reform*, *supra* note 7, at 26.

59 As this point was made by the Joint Legislative Task Force on Budget Reform: Year after year, session after session, the Alabama Legislature returns to Montgomery to answer the same, age-old question: “What are we going to do to fill the hole in the [State General Fund]?” Certainly, there have been times over the years that this was not the case, but for the most part this question has been asked annually for decades.

Id. at 1.

60 The Education Trust Fund, though earmarked “for educational purposes,” has been used to fund “quasi-educational” and “non-educational” agencies and enterprises. See Harvey, *supra* note 5, at 403–04. For example, in recent years millions of dollars have been diverted from the Education Trust Fund to pay for such enterprises as expanding a manufacturing facility that makes cruise missiles; auditing entities that receive public money; providing daycare to adults; promoting outdoor recreation and tourism; and operating a hall of fame and museum dedicated to enshrining legends of motorsports. See Cameron Smith, Opinion, “15 Earmarks and Line Items in Alabama’s Education Trust Fund That Aren’t Education Spending,” *AL.com* (July 20, 2015), http://www.al.com/opinion/index.ssf/2015/07/15_earmarks_in_alabamas_educat.html [<http://perma.cc/2NV5-TLLG>].

61 See Pilegge, *supra* note 3, at 64–65.

62 For fiscal year 2017, the SGF was appropriated \$15.0 billion and the ETF was appropriated \$15.5 billion, totaling \$30.5 billion. See Executive Budget Office, Alabama Department of Finance, *Executive Budget, Fiscal Year 2018*, at xi, xix (2017), <http://budget.alabama.gov/wp-content/uploads/sites/9/2017/09/BudDoc2018.pdf> [<http://perma.cc/7KKX-AW6C>]. Of that total, specifically earmarked appropriations accounted for \$22.1 billion, or 72.4%. See *id.* (reporting the amount of “earmarked funds” appropriated to the SGF and the ETF).

63 See *supra* note 62.

64 *Interim Report of the Joint Legislative Task Force on Budget Reform*, *supra* note 7, at 26. The task force identified Florida, Georgia, Louisiana, South Carolina, and Texas as examples of “states that have trended toward a lowering of earmarks.” *Id.*

65 Pérez, *supra* note 9, at 5.

66 The term “specifically earmarked revenues” is discussed at the start of the “Recommendations” section.

67 See *supra* note 62.

68 For fiscal year 2017, the SGF was appropriated \$15.0 billion and the ETF was appropriated \$15.5 billion. See Executive Budget Office, *supra* note 62, at xi, xix. Taking 25% of the total of these appropriations equals \$7.6 billion:

$$.25 \times (\$15.0 \text{ billion} + \$15.5 \text{ billion}) = \$7.6 \text{ billion}$$

Taking 25% of each of the appropriations and then adding the resultant amounts together also equals \$7.6 billion:

$$(.25 \times \$15.0 \text{ billion}) + (.25 \times \$15.5 \text{ billion}) = \$7.6 \text{ billion}$$

Both of the above equations are, of course, equivalent based on the distributive law from elementary algebra. See, e.g., Elliott Mendelson, *Introduction to Mathematical Logic* 159 (6th ed. 2015) (demonstrating distributivity).

69 For fiscal year 2017, the SGF was appropriated \$15.0 billion and the ETF was appropriated \$15.5 billion. See Executive Budget Office, *supra* note 62, at xi, xix. Taking 25% of the total of these appropriations equals \$7.6 billion:

$$.25 \times (\$15.0 \text{ billion} + \$15.5 \text{ billion}) = \$7.6 \text{ billion}$$

Taking 40% of the SGF appropriations and 10% of the ETF appropriations and then adding the resultant amounts together also equals \$7.6 billion:

$$(.40 \times \$15.0 \text{ billion}) + (.10 \times \$15.5 \text{ billion}) = \$7.6 \text{ billion}$$