

Alabama's 2015 Education Budget and The Education Rolling Reserve Cap

Background

The Governor, the Legislature, and each State entity give input into the budgeting of the State's two major funds: the Education Trust Fund (ETF) and the State General Fund (GF). The annual budgeting process begins with each State entity sending budget requests to the Governor's Executive Budget Office, which then reviews and compiles the information.¹ The Executive Budget Office's compilation of this information is known as the "Executive Budget Document."

In turn, the Governor submits the "Executive Budget Document" to the Legislature² where further revisions are made.³ After the Legislature's revision, a vote is taken in the House and Senate and if passed, the bill is signed by the Governor.⁴ This process occurs individually for the GF and ETF.⁵

The ETF and the GF accounted for \$7.5 billion of the State's \$11 billion expenditures in Fiscal Year 2014 (FY2014).⁶

The ETF makes up 51% of the State's budget⁷ and primarily funds K-12 education and higher education.⁸ The ETF funds come from a variety of taxes specifically designated, or earmarked, for the ETF; in FY2013, the highest two were income tax (\$2.9 billion) and sales tax (\$1.6 billion).⁹

When revenues from income, sales, and other taxes fall short of estimates, the Governor is not allowed to borrow funds to make up the difference. Instead, across the board cuts must take place. These cuts are known as

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The Education Trust Fund (ETF) accounted for 51% of the State budget in Fiscal Year (FY) 2014.

As a result of budget miscalculations, the ETF faced proration six times since 2000.

The Legislature attempted to prevent proration by supplementing the budget with \$1.06 billion. Also, the Legislature enacted the Education Rolling Reserve Act (ERRA) which limits appropriation growth to a 15-year average growth rate.

In Governor Bentley's FY2015 budget, he exceeds the ERRA limit by \$92 million.

proration.¹⁰ In the past thirteen years, proration occurred six times.¹¹

In an attempt to prevent proration, the Legislature created the ETF Rainy Day Account. Funds for the ETF Rainy Day Account come from the Alabama Trust Fund (a State investment revenue fund). Any borrowed funds must be repaid within six years.¹² Since 2003, the Legislature has borrowed \$1.06 billion.¹³ The ETF must fully repay the ETF Rainy Day Account the remaining balance of \$128 million by the end of FY2015.¹⁴

To prevent future revenue shortfalls, the Alabama Legislature enacted The Education Rolling Reserve Act (ERRA) during the 2011 legislative session.¹⁵ This act provides for an appropriations cap for the ETF, based on

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a fifteen-year average growth rate in revenues.¹⁶ Any ETF revenue over the cap will be “transferred to the Education Trust Fund Rainy Day Account until the Account has been repaid in full.” At which point, funds will be transferred into the Education Trust Fund Budget Stabilization Fund.¹⁷

As required by law,¹⁸ the Governor submitted his recommended budget for FY2015 prior to the beginning of the Legislative session in January 2014.¹⁹

Policy Consideration

As explained above, the State faced difficult financial situations in the recent past. In response, the Governor’s FY2015 budget recommends a decrease in ETF appropriations: \$37.5 million less in FY2014 for a grand total of \$5.991 billion.²⁰ The ERRA cap greatly influences this appropriation limit, although Governor Bentley still recommends appropriations above the ERRA limit.

The FY2015 ERRA appropriations limit equals \$5.899 billion.²¹ Therefore, regardless of revenue estimates, no more than \$5.899 billion can be budgeted or appropriated through the ETF. Despite this limitation, the Governor’s “Education Trust Fund Budget Summary” grand total equals \$5.991 billion,²² \$92 million more than the statutory limitation created by the ERRA. The \$92 million above the ERRA appropriations limit comes from a “gross sales tax fund transfer.”²³

This work around of the ERRA cap reappropriates receipts from sales tax, prior to the sales tax entering the ETF budget, and supposedly the ERRA cap’s limitation does not apply. The Legislature enacted a similar transfer of \$52 million during FY2013.²⁴

Conclusion

The Governor’s more realistic budget recommendations increase the likelihood of passing a more realistic budget in the Legislature. This will help stabilize the State’s operations by reducing the likelihood of proration.

Although the Governor’s recommendation is less than the previous year’s appropriations, the recommended appropriation still exceeds the limit of the ERRA cap. The ERRA places a clear appropriation limit on the ETF.²⁵ In addition, the Code of Alabama provides for the distribution of *all* gross sales tax revenue, leaving no additional funds for a “gross sales tax fund transfer” to the ETF.²⁶ Therefore, the Governor’s “gross sales tax fund transfer” is suspect unless there is a change to the statutes controlling the disbursement of sales tax.

Even if the receipts from sales tax result in revenues above the ERRA cap and although the Governor may see need to use these funds for a “2 percent teacher pay raise and funding the programs [he] want[s] to fund,”²⁷ without changes to the Code, the Governor and the Legislature cannot appropriate any amount over the ERRA cap to the ETF. In accordance with the ERRA, any additional funds must be used only to repay funds previously borrowed from the ETF Rainy Day Account or transferred to the Education Trust Fund Budget Stabilization Fund.²⁸

¹ALA. CODE. §41-19-6 *available at* <http://alisondb.legislature.state.al.us/acas/CodeOfAlabama/1975/41-19-6.htm>.

²ROBERT BENTLEY, *State of Ala. Executive Budget: Fiscal Year 2015*, OFFICE OF THE GOVERNOR (2015), <http://budget.alabama.gov/pdf/buddoc/BudDoc2015.pdf>.

³ALA. CODE. §41-19-8 *available at* <http://alisondb.legislature.state.al.us/acas/CodeOfAlabama/1975/41-19-8.htm>.

⁴PATRICK HARRIS & MCDOWELL LEE, *Alabama’s Legislative Process: Senate Document No. 3 Revised 2011*, http://www.legislature.state.al.us/misc/legislativeprocess/legislativeprocess_ml.html (last visited Jan. 27, 2014).

⁵E-mail from Shonda Stallworth, Legislative Fiscal Analyst: Education, Alabama Legislative Fiscal Office, to author (Dec. 14, 2012, 10:46 CST) (on file with author).

⁶Author’s Calculations: 1,749,713,969 (General Fund) + 5,765,396,233 (Education Trust Fund) = 7,515,110,202. NORRIS W. GREEN, *A Legislator’s*

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Guide to Alabama's Taxes – 2014 Edition, ALABAMA LEGISLATIVE FISCAL OFFICE, 393 (2014), <http://www.lfo.state.al.us/pdfs/Tax%20Guide/2014%20Tax%20Guide.pdf#page=398>.

⁷ *Id.* at 394.

⁸ *Id.* at 399.

⁹ *Id.* at 405.

¹⁰ ALA. CONST. amend. 26, available at <http://alisondb.legislature.state.al.us/acas/CodeOfAlabama/Constitution/1901/CA-887808.htm>.

¹¹ NORRIS GREEN, *Budget Fact Book FY 2014*, ALABAMA LEGISLATIVE FISCAL OFFICE, 2 (Jan. 14, 2014), <http://www.lfo.state.al.us/pdfs/Budget%20Fact%20Book/2014%20Budget%20Fact%20Book.pdf#page=10>.

¹² ALA. CONST. amend. 803, available at <http://alisondb.legislature.state.al.us/acas/CodeOfAlabama/Constitution/1901/CA-1842681.htm>.

¹³ Author's calculations: Addition of values in footnotes 1 (\$179,993,229 and \$54,520), 2 (\$439,372,515), and 3 (\$437,390,828 and \$129,590) for a total of \$1,056,940,412. NORRIS GREEN *supra* note 6 .

¹⁴ NORRIS GREEN *supra* note 6 at 5.

¹⁵ Jim Bennett, *Government Records: Legislative Act Details – Act Number 2011-3*, ALABAMA SECRETARY OF STATE, <http://arc-sos.state.al.us/cgi/actdetail.mbr/detail?page=act&year=2011&act=3>.

¹⁶ H.B. 57, 2011 Leg., Reg. Sess., 3-4 (Ala. 2011), <http://alisondb.legislature.state.al.us/acas/searchableinstruments/2011RS/Printfiles/HB57-enr.pdf#page=4>.

The cap is calculated in the following manner: “recurring revenues deposited into the Education Trust Fund in the last completed fiscal year” + (“recurring revenues deposited into the Education Trust Fund in the last completed fiscal year” x average annual percentage change in the recurring revenues deposited into the Education Trust Fund for the past 15 completed fiscal years) + [(40% x (the previous year's recurring revenue – the year preceding the last completed fiscal year's recurring revenue) *only if the percentage of the last completed fiscal year's recurring revenues deposited was higher than the 15-year average growth rate*) + [95% of expected revenue from newly enacted recurring revenue sources] + nonrecurring revenue.

¹⁷ *Id.* at 5-6.

¹⁸ ALA. CODE. §41-19-6 available at <http://alisondb.legislature.state.al.us/acas/CodeOfAlabama/1975/41-19-6.htm>.

¹⁹ Robert Bentley *supra* note 2.

²⁰ *Id.* at xvi.

²¹ Norris Green, *Presentation to the Legislature on Alabama's Financial Condition – Jan. 13, 2014*, ALABAMA LEGISLATIVE FISCAL OFFICE, <http://www.lfo.state.al.us/pdfs/Presentations/Legislative%20Presentation%202011-13-14.pdf#page=12>.

²² *Education Trust Fund Budget Summary*, Alabama Department of Finance – Executive Budget Office, <http://www.budget.state.al.us/pdf/etf/ETF2015.pdf#page=9>.

²³ *Id.*

²⁴ Robert Bentley *supra* note 2 at xiii.

²⁵ H.B. 57 *supra* note 16.

²⁶ Ala. Code. §40-23-35 available at <http://alisondb.legislature.state.al.us/acas/CodeOfAlabama/1975/40-23-35.htm>.

²⁷ Kim Chandler, *Bentley budget reroutes money to get around spending limit (that he signed into law)*, AL.COM, (Jan. 16, 2014) http://blog.al.com/wire/2014/01/bentley_budget_reroutes_money.html#ncart_river_default.

²⁸ H.B. 57 *supra* note 16 at 5-6.