

1 HB743  
2 120692-2  
3 By Representative Lindsey  
4 RFD: Education Appropriations  
5 First Read: 23-MAR-10



1 may be used to secure deposits of funds of this state and its  
2 political subdivisions, instrumentalities and agencies and for  
3 investment of fiduciary funds; to authorize the Authority to  
4 establish procedures and requirements to ensure compliance  
5 with the tax covenants with which the Authority must comply;  
6 to exempt the bonds from the usury laws of the state; to  
7 authorize the Authority to issue refunding bonds and give the  
8 details of such refunding; to provide for the employment of  
9 attorneys, fiscal advisors, trustees, paying agents,  
10 investment bankers, banks, and underwriters and for the  
11 payment of all expenses incurred in the issuance of the bonds;  
12 to provide that after payment of the expenses of the issuance  
13 of the bonds the proceeds from the sale thereof shall be  
14 disbursed on order or warrants issued by or under the  
15 direction of the Authority for the purposes for which the  
16 bonds are authorized to be issued; it provides that the bonds  
17 may not be issued if certain conditions are met; and to  
18 provide that if any portion of this act should be held invalid  
19 such holding shall not affect the validity of any other  
20 portion thereof.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Definitions. Wherever used in this act,  
23 the following terms shall have the following meanings  
24 respectively, unless the context clearly indicates otherwise:

25 (1) "Authority" means the Alabama Public School and  
26 College Authority.

1           (2) "Bonds" means those bonds, other than Refunding  
2 Bonds, issued under the provisions of this act.

3           (3) "Government Securities" means any bonds or other  
4 obligations which as to principal and interest constitute  
5 direct obligations of, or are unconditionally guaranteed by,  
6 the United States of America, including obligations of any  
7 federal agency to the extent such obligations are  
8 unconditionally guaranteed by the United States of America and  
9 any certificates or any other evidences of an ownership  
10 interest in such obligations of, or unconditionally guaranteed  
11 by, the United States of America or in specified portions  
12 thereof (which may consist of the principal thereof or the  
13 interest thereon).

14           (4) "Legislature" means the Legislature of Alabama.

15           (5) "Permitted Investments" means (i) Government  
16 Securities; (ii) bonds, debentures, notes or other evidences  
17 of indebtedness issued by any of the following agencies: Bank  
18 for Cooperatives; Federal Intermediate Credit Banks; Federal  
19 Financing Bank; Federal Home Loan Banks; Federal Farm Credit  
20 Bank; Export-Import Bank of the United States; Federal Land  
21 Banks; or Farmers Home Administration or any other agency or  
22 corporation which has been or may hereafter be created by or  
23 pursuant to an act of the Congress of the United States as an  
24 agency or instrumentality thereof; (iii) bonds, notes, pass  
25 through securities or other evidences of indebtedness of  
26 Government National Mortgage Association and participation

1 certificates of Federal Home Loan Mortgage Corporation; (iv)  
2 full faith and credit obligations of any state, provided that  
3 at the time of purchase such obligations are rated at least  
4 "AA" by Standard & Poor's Ratings Group and at least "Aa" by  
5 Moody's Investors Service; (v) public housing bonds issued by  
6 public agencies or municipalities and fully secured as to the  
7 payment of both principal and interest by contracts with the  
8 United States of America, or temporary notes, preliminary  
9 notes or project notes issued by public agencies or  
10 municipalities, in each case fully secured as to the payment  
11 to both principal and interest by a requisition or payment  
12 agreement with the United States of America; (vi) time  
13 deposits evidenced by certificates of deposit issued by banks  
14 or savings and loan associations which are members of the  
15 Federal Deposit Insurance Corporation, provided that, to the  
16 extent such time deposits are not covered by federal deposit  
17 insurance, such time deposits (including interest thereon) are  
18 fully secured by a pledge of obligations described in clauses  
19 (i), (ii), (iii), and (v) above, which at all times have a  
20 market value not less than the amount of such bank time  
21 deposits required to be so secured and which meet the greater  
22 of 100% collateralization or the "AA" collateral levels  
23 established by Standard & Poor's Ratings Group for structured  
24 financings; (vii) repurchase agreements for obligations of the  
25 type specified in clauses (i), (ii), (iii), and (v) above,  
26 provided such repurchase agreements are fully collateralized

1 and secured by such obligations which have a market value at  
2 least equal to the purchase price of such repurchase  
3 agreements which are held by a depository satisfactory to the  
4 State Treasurer in such manner as may be required to provide a  
5 perfected security interest in such obligations, and which  
6 meet the greater of 100% collateralization or the "AA"  
7 collateral levels established by Standard & Poor's Ratings  
8 Group for structured financings; and (viii) uncollateralized  
9 investment agreements with, or certificates of deposit issued  
10 by, banks or bank holding companies, the senior long-term  
11 securities of which are rated at least "AA" by Standard &  
12 Poor's Ratings Group and at least "Aa" by Moody's Investors  
13 Service.

14 (6) "Refunding Bonds" means those refunding bonds  
15 issued under the provisions of this act.

16 (7) "State" means the State of Alabama.

17 Section 2. (a) On or before December 1, 2010, the  
18 Authority shall sell and issue its Bonds in the aggregate  
19 principal amount of \$66,500,000 and shall apply the proceeds  
20 as provided in this act.

21 (b) The Bonds authorized by this act to be issued by  
22 the Authority shall be in addition to all other bonds  
23 previously authorized to be issued by it, and the powers  
24 conferred on the Authority by this act are in addition to all  
25 other powers heretofore conferred on the Authority by acts  
26 heretofore enacted by the Legislature.

1                   Section 3. The Bonds shall be signed by the  
2                   president or vice-president of the Authority, and the seal of  
3                   the Authority affixed thereto (or a facsimile thereof  
4                   imprinted thereon) and attested by its secretary. All  
5                   signatures of the president, vice-president, and secretary may  
6                   be facsimile signatures if the Authority, in its proceedings  
7                   with respect to issuance, provides for manual authentication  
8                   (which may be in the form of a certificate as to registration)  
9                   of the Bonds by a trustee, registrar or paying agent or by  
10                  named individuals who are employees of the State and who are  
11                  assigned to the Finance Department or State Treasurer's Office  
12                  of the State. All Bonds bearing signatures or facsimiles of  
13                  the signatures of officers of the Authority in office on the  
14                  date of signing thereof shall be valid and binding  
15                  notwithstanding that before the delivery thereof and payment  
16                  therefor, any officer whose signature appears thereon shall  
17                  have ceased to be an officer of the Authority. The Bonds and  
18                  the income therefrom shall be exempt from all taxation in the  
19                  State of Alabama, may be used as security for deposits, and  
20                  shall be eligible for investments of fiduciary funds, as  
21                  provided in the 1965 Act. The Bonds shall be construed to have  
22                  all the qualities and incidents of negotiable instruments  
23                  subject to any registration provisions pertaining to  
24                  transfers. The Authority and the Bonds shall be exempt from  
25                  all laws of the State governing usury including, without  
26                  limitation, the provisions of Title 8, Chapter 8, Code of

1 Alabama 1975, or any subsequent statute of similar import. The  
2 Bonds shall be in such form or forms and denomination or  
3 denominations and of such tenor and maturities, shall bear  
4 such rate or rates of interest payable and evidenced in such  
5 manner, may be made subject to redemption prior to their  
6 maturities, and may contain provisions not inconsistent with  
7 this act, all as may be provided by the resolution of the  
8 Authority under which the Bonds may be issued; provided, that  
9 no Bonds shall have a specified maturity date later than  
10 twenty years after their date; and provided further, that  
11 those Bonds having maturities more than ten years after their  
12 date shall be subject to redemption at the option of the  
13 Authority on any date on and after the tenth anniversary after  
14 their date at such redemption price or prices and under such  
15 conditions as may be prescribed in the proceedings of the  
16 Authority under which they are issued. For the purpose of  
17 paying the principal of, premium, if any, and interest on the  
18 Bonds or any Refunding Bonds, the Authority shall designate  
19 the State Treasurer or such bank or banks as the Authority, in  
20 its discretion, determines to be appropriate and desirable.  
21 Funds for the payment of debt service shall be transferred by  
22 the Authority or the State Treasurer on behalf of the  
23 Authority to the designated paying agent on the actual due  
24 date of such principal, premium, if any, or interest.

25 Section 4. The Bonds may be sold by the Authority  
26 from time to time in series, and if sold in more than one



1 series, may all be authorized in one initial resolution of the  
2 Authority with the pledges therefor made by the Authority in  
3 such initial resolution although some of the details  
4 applicable to each series may be specified in the respective  
5 resolutions under which the different series are issued. Each  
6 series of the Bonds shall be sold by negotiated sale or  
7 competitively only at public sale, on sealed bids which may be  
8 submitted either electronically or in writing, after such  
9 advertisement as shall be prescribed by the Authority and at  
10 such time or times as the Authority may consider advantageous,  
11 to the bidder whose bid reflects the lowest true interest cost  
12 to the Authority computed to the respective maturities of the  
13 Bonds being sold (considering mandatory redemption as  
14 scheduled maturity); provided, that if no bid deemed  
15 acceptable by the Authority is received it may reject all  
16 bids. The Authority may fix the method and the terms and  
17 conditions under which the sale of any series of the Bonds may  
18 otherwise be held; provided that such terms and conditions  
19 shall not conflict with any requirement of this act. Approval  
20 by the Governor of Alabama of the terms and conditions under  
21 which any of the Bonds may be issued shall be requisite to  
22 their validity. Neither a public hearing nor consent of the  
23 State Department of Finance or any other department or agency  
24 shall be a prerequisite to the issuance of any of the Bonds.

25 Section 5. In the event the Authority elects to sell  
26 these bonds by negotiated sale, the Authority shall consult

1 with the Chairs of the House Education Appropriation Committee  
2 and the Chair of the Senate Finance and Taxation - Education  
3 Committee during the negotiations. The chairs shall make a  
4 report to members of the above mentioned committees on the  
5 details of the negotiated sale.

6           Section 6. (a) Notwithstanding Section 16-13-234 of  
7 the Code of Alabama, 1975, for the purpose of providing for  
8 payment of the principal, premium (if any), and interest on  
9 the Bonds, and to accomplish the objectives of this act, there  
10 is hereby irrevocably pledged to those purposes, and hereby  
11 appropriated, such amount as may be necessary therefor from  
12 the revenues of the Public School Fund, as created by Section  
13 260 of the Constitution of Alabama of 1901.

14           (b) All monies hereby appropriated and pledged shall  
15 constitute a sinking fund for the purpose of paying the  
16 principal of, premium, if any, and interest on the Bonds. The  
17 State Treasurer is authorized and directed to pay at their  
18 respective maturities the principal of, premium, if any, and  
19 interest on the Bonds out of this fund and out of the residues  
20 of the tax receipts herein appropriated and pledged for the  
21 benefit of the Bonds, and is further authorized and directed  
22 to set up and maintain appropriate records pertaining thereto.

23           Section 7. The Bonds shall not be general  
24 obligations of the Authority but shall be limited obligations  
25 payable solely out of the residues of the revenues  
26 appropriated and pledged in Section 5 of this act. All Bonds

1 issued by the Authority pursuant to the provisions of this act  
2 shall be solely and exclusively obligations of the Authority  
3 and shall not constitute or create an obligation or debt of  
4 the State. As security for the payment of the principal of,  
5 premium, if any, and interest on the Bonds, the Authority is  
6 hereby authorized and empowered to pledge the revenues that  
7 are appropriated and pledged in Section 5 hereof for such  
8 purposes. All such pledges made by the Authority shall take  
9 precedence in the order of the adoption of the resolutions  
10 containing the pledges.

11 Section 8. For the purpose of refunding Bonds of the  
12 Authority issued under the provisions of this act, whether  
13 such refunding shall occur before, at or after the maturity of  
14 the Bonds refunded and for the purpose of paying all premiums  
15 and expenses of such refunding (including, but not limited to,  
16 attorneys' fees, costs of printing the Refunding Bonds, fiscal  
17 agents' fees, and accountants' fees), the Authority is hereby  
18 authorized to sell and issue its Refunding Bonds. Such  
19 Refunding Bonds may be sold and issued from time to time, at  
20 public sale, on sealed bids and on such other terms and  
21 conditions as the Authority shall determine to be advantageous  
22 and shall adopt and provide for in its proceedings for the  
23 sale and issuance of such Refunding Bonds. Provided, however,  
24 no Refunding Bonds shall be issued unless the present value of  
25 all debt service on the Refunding Bonds (computed with a  
26 discount rate equal to the true interest rate of the Refunding

1 Bonds and taking into account all underwriting discount and  
2 other issuance expenses) shall not be greater than 95 percent  
3 of the present value of all debt service on the Bonds to be  
4 refunded (computed using the same discount rate and taking  
5 into account the underwriting discount and other issuance  
6 expenses originally applicable to such Bonds) determined as if  
7 such Bonds to be refunded were paid and retired in accordance  
8 with the schedule of maturities (considering mandatory  
9 redemption as scheduled maturity) provided at the time of  
10 their issuance. Provided further that the average maturity of  
11 the Refunding Bonds, as measured from the date of issuance of  
12 such Refunding Bonds, shall not exceed by more than three  
13 years the average maturity of the Bonds to be refunded, as  
14 also measured from such date of issuance, with the average  
15 maturity of any principal amount of Bonds to be determined by  
16 multiplying the principal of each maturity by the number of  
17 years (including any fractional part of a year) intervening  
18 between such date of issuance and each such maturity, taking  
19 the sum of all such products, and then dividing such sum by  
20 the aggregate principal amount of Bonds for which the average  
21 maturity is to be determined. For the purpose of providing  
22 funds to enable the Authority to pay at their respective  
23 maturities the principal of, premium, if any, and interest on  
24 the Refunding Bonds issued under this act, the Authority is  
25 hereby authorized to pledge irrevocably for such purpose, and  
26 there is hereby appropriated for such purpose, such amount as

1 may be necessary of the residues of the receipts from the  
2 revenues pledged and appropriated in Section 5 of this act,  
3 any reserves or sinking funds established by the Authority, as  
4 well as revenues of the Authority from any other sources  
5 specified in the proceedings wherein the Refunding Bonds are  
6 authorized to be issued. Pending the application of the  
7 proceeds of Refunding Bonds issued in accordance with this  
8 Section, the proceeds, together with investment earnings  
9 therefrom, and amounts in any sinking fund, together with  
10 investment earnings thereon, may be held by the State  
11 Treasurer as treasurer of the Authority in trust, or may be  
12 deposited by the State Treasurer in trust, on such terms as  
13 the State Treasurer and the Authority shall approve, with a  
14 trustee or escrow agent, which trustee or escrow agent shall  
15 be a banking institution or trust company authorized to  
16 exercise trust powers in Alabama, for investment in Permitted  
17 Investments. Proceeds of Refunding Bonds shall be so invested  
18 and applied as to assure that the principal, interest, and  
19 redemption premium, if any, on the Bonds being refunded shall  
20 be paid in full on the respective maturity, redemption, or  
21 interest payment dates. Refunding Bonds issued by the  
22 Authority shall not be general obligations of the Authority  
23 but shall be payable solely from the sources specified in this  
24 act and in the proceedings whereby the Refunding Bonds are  
25 authorized to be issued. All Refunding Bonds issued by the  
26 Authority shall be solely and exclusively obligations of the

1 Authority and shall not create debts of the State of Alabama.  
2 The faith and credit of the State of Alabama shall never be  
3 pledged for the payment of any Refunding Bonds issued by the  
4 Authority under this act. The Authority may contract with  
5 respect to the safekeeping and application of the proceeds of  
6 Refunding Bonds and other funds included therewith and the  
7 income therefrom, and shall have the right and power to  
8 appoint a trustee therefore, which may be any bank or company  
9 authorized to exercise trust powers and located within and/or  
10 without the State. All other provisions of this act shall  
11 apply to the Refunding Bonds issued hereunder except the  
12 limitation contained in Section 2 of this act on the amount of  
13 Bonds that may be issued under this act. All pledges made by  
14 this act, or by the Authority pursuant to the provisions of  
15 this act, for the benefit of Refunding Bonds issued under this  
16 act shall take precedence in the order of the adoption of the  
17 resolutions authorizing the issuance of such Refunding Bonds.  
18 Bonds refunded prior to their maturity with the proceeds of  
19 Refunding Bonds shall be deemed paid and the pledges herein  
20 and by the Authority made for the payment thereof defeased if  
21 the Authority, in its proceedings regarding issuance of the  
22 Refunding Bonds shall provide for and establish a trust or  
23 escrow fund comprised of monies or Government Securities, or  
24 both, sufficient to pay, when due, the entire principal of,  
25 premium, if any, and interest on the Bonds to be refunded  
26 thereby; provided, that such Government Securities shall not

1 be subject to redemption prior to their maturities other than  
2 at the option of the holder thereof. Upon the establishment of  
3 such a trust or escrow fund, the refunded Bonds shall no  
4 longer be deemed to be outstanding, shall no longer be secured  
5 by the funds pledged therefor in Section 5 of this act, shall  
6 no longer be obligations of the Authority and shall be secured  
7 solely by and payable from monies and Government Securities  
8 deposited in such trust or escrow fund.

9 Section 9. (a) The proceeds derived from each sale  
10 of the Bonds issued pursuant to this act shall be deposited in  
11 the State Treasury and shall be carried in a separate fund  
12 therein for the account of the Authority, which shall pay the  
13 expenses of issuance therefrom. The expenses of issuance of  
14 the Bonds shall be prorated among the recipients of the  
15 proceeds from the sale of the Bonds in proportions they  
16 receive allocations of the proceeds thereunder. The proceeds  
17 from the sale of the Bonds remaining after payment of the  
18 expenses of issuance thereof shall be retained in said fund  
19 and, until they are paid out, shall be invested by the State  
20 Treasurer at the direction of the Authority in Permitted  
21 Investments maturing at such time or times as the Authority  
22 shall direct.

23 (b) Proceeds from the sale of the Bonds and the  
24 earnings thereon shall be paid out from time to time on orders  
25 or warrants issued by or at the direction of the Authority for

1 the purposes specified in this act, to include the following  
2 allocations:

3 (1) Thirty two million three hundred two thousand  
4 six hundred eighty seven dollars (\$32,302,687) shall be  
5 allocated and expended to repay the Education Trust Fund for  
6 appropriations made in Act 2009-339 to the local boards of  
7 education for the purpose of school bus fleet renewal. Such  
8 repayment shall occur on or after October 1, 2010, or the date  
9 the bonds are issued, whichever is later.

10 (2) Thirty three million forty thousand one hundred  
11 seventy dollars (\$33,040,170) shall be allocated and expended  
12 for local boards of education for the purpose of school bus  
13 fleet renewal. The allocation in this subdivision shall be  
14 distributed by the State Department of Education to the  
15 various local boards of education in the same manner that  
16 fleet renewal funds are distributed for purposes of the  
17 Foundation Program. Local boards of education may use the  
18 distribution provided by this subdivision to retire existing  
19 indebtedness that was incurred to pay for capital  
20 improvements.

21 Section 10. Notwithstanding any of the foregoing and  
22 in addition to all powers heretofore granted to the Authority,  
23 the Authority is hereby expressly authorized to use the  
24 proceeds derived from the sale of Bonds and income on  
25 Permitted Investments in accordance with the provisions of  
26 this act. Additionally, the Authority is hereby expressly



1 permitted to pay to the Department of Finance and the State  
2 Treasurer's Office, from time to time and from any funds  
3 available to the Authority, amounts to offset costs incurred  
4 in the administration of the business of the Authority. The  
5 cost of such compensation shall be prorated among the  
6 recipients of proceeds of the Bonds in the same manner as the  
7 expenses of issuance of the Bonds are required hereby to be  
8 prorated.

9 Section 11. The Authority shall hire or contract  
10 with businesses or individuals which reflect the racial and  
11 ethnic diversity of the State.

12 Section 12. Tax Exemption. The Authority shall have  
13 the power to make such payments to the United States of  
14 America as the board of directors of the Authority deems  
15 necessary to cause the interest on any bonds of the Authority,  
16 including the Bonds, to be and remain exempt from, or  
17 excludible from gross income for purposes of, federal income  
18 taxation. The Authority shall have the power to make such  
19 agreements respecting the investment of funds of the Authority  
20 as the Authority shall deem necessary in order that the  
21 interest income on bonds of the Authority be and remain exempt  
22 from, or excludible from gross income for purposes of, federal  
23 income taxation.

24 Section 13. Issuance Expenses; Contracts and  
25 Appointments. The Authority is authorized to pay out of  
26 proceeds of any series of Bonds the costs and expenses

1 incurred in connection with the issuance of such Bonds,  
2 including without limitation legal and accounting fees and  
3 expenses, fees and expenses of any financial or fiscal advisor  
4 employed by the Authority, printing costs, rating agency fees,  
5 and premiums or charges for any credit enhancement or  
6 liquidity providers. Notwithstanding any provision of this act  
7 or the 1965 Act, in appointing, employing, or contracting with  
8 attorneys, fiscal advisers, trustees, paying agents,  
9 investment bankers, banks and underwriters, the Authority may  
10 appoint, employ or contract with firms whose principal offices  
11 are located without or within Alabama. The Authority shall  
12 hire or contract with attorneys, fiscal advisors, trustees,  
13 paying agents, investment bankers, banks, and underwriters  
14 which shall reflect the racial and ethnic diversity of the  
15 state. The Authority shall issue Requests For Proposals for  
16 attorneys, fiscal advisors, trustees, paying agents,  
17 investment bankers, banks, and underwriters. The Authority  
18 shall evaluate each proposed bid publicly and award each  
19 contract publicly. Minutes of the Authority's meeting shall  
20 record the reasons for awarding each contract.

21 Section 14. Withdrawal of Authority to Issue Bonds.  
22 The Alabama Public School and College Authority shall not  
23 issue any of the bonds provided for in this act if, prior to  
24 the issuance of such bonds, the state receives an amount  
25 greater than or equal to \$66,500,000 in federal funds from a  
26 federal jobs bill, or other similar federal act, enacted after

1 March 1, 2010, and such funds may be used by local boards of  
2 education for the purpose of school bus fleet renewal.

3 Section 15. Severability. In the event any section,  
4 sentence, clause or provision of this act shall be declared  
5 invalid by a court of competent jurisdiction, such action  
6 shall not affect the validity of the remaining sections,  
7 sentences, clauses, or provisions of this act, which shall  
8 continue effective.

9 Section 16. Effective Date. This act shall become  
10 effective immediately upon its passage and approval by the  
11 Governor or upon its otherwise becoming a law.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Education Appro-  
priations ..... 23-MAR-10

Read for the second time and placed  
on the calendar with 1 substitute  
and ..... 25-MAR-10

Read for the third time and passed  
as amended ..... 30-MAR-10

Yeas 93, Nays 8, Abstains 1

Greg Pappas  
Clerk