

1 HB743
2 120692-7
3 By Representative Lindsey
4 RFD: Education Appropriations
5 First Read: 23-MAR-10

1
2 ENROLLED, An Act,

3 To authorize the Alabama Public School and College
4 Authority to sell and issue \$66,500,000 in aggregate principal
5 amount of additional bonds for the support of public
6 education; to authorize the Authority to reimburse the
7 Department of Finance and the State Treasurer's office for
8 costs incurred in providing services for the Authority; to
9 authorize the Authority to provide for the details of the
10 bonds and the sale and issuance thereof; to make an
11 appropriation and pledge for payment of the principal and
12 interest on the bonds from specific funds necessary to pay the
13 principal and interest at their respective maturities and
14 authorizes the Authority to pledge for payment of the
15 principal and interest on the bonds the funds that are
16 appropriated and pledged; to provide for the investment of
17 funds by the State Treasurer; to provide that the bonds shall
18 not constitute a debt of the state but shall be limited
19 obligations payable out of the funds appropriated and pledged
20 therefor; to provide that the bonds and income therefrom shall
21 be exempt from all taxation in this state and that the bonds
22 may be used to secure deposits of funds of this state and its
23 political subdivisions, instrumentalities and agencies and for
24 investment of fiduciary funds; to authorize the Authority to
25 establish procedures and requirements to ensure compliance

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

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Definitions. Wherever used in this act,
19 the following terms shall have the following meanings
20 respectively, unless the context clearly indicates otherwise:

21 (1) "Authority" means the Alabama Public School and
22 College Authority.

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

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

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

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

1 full faith and credit obligations of any state, provided that
2 at the time of purchase such obligations are rated at least
3 "AA" by Standard & Poor's Ratings Group and at least "Aa" by
4 Moody's Investors Service; (v) public housing bonds issued by
5 public agencies or municipalities and fully secured as to the
6 payment of both principal and interest by contracts with the
7 United States of America, or temporary notes, preliminary
8 notes or project notes issued by public agencies or
9 municipalities, in each case fully secured as to the payment
10 to both principal and interest by a requisition or payment
11 agreement with the United States of America; (vi) time
12 deposits evidenced by certificates of deposit issued by banks
13 or savings and loan associations which are members of the
14 Federal Deposit Insurance Corporation, provided that, to the
15 extent such time deposits are not covered by federal deposit
16 insurance, such time deposits (including interest thereon) are
17 fully secured by a pledge of obligations described in clauses
18 (i), (ii), (iii), and (v) above, which at all times have a
19 market value not less than the amount of such bank time
20 deposits required to be so secured and which meet the greater
21 of 100% collateralization or the "AA" collateral levels
22 established by Standard & Poor's Ratings Group for structured
23 financings; (vii) repurchase agreements for obligations of the
24 type specified in clauses (i), (ii), (iii), and (v) above,
25 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 (8) "Swap Agreement" means any instrument defined as
18 a "swap agreement" under the terms of Section 41-4-41(3) of
19 the Code of Alabama, 1975.

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

24 (b) The Authority shall also be authorized to issue
25 and sell its bonds in such principal amount or amounts and at

1 such time or times as the Board of Directors shall determine
2 for the purpose of satisfying and discharging any obligations
3 of the Authority arising out of any Swap Agreements entered
4 into by the Authority.

5 ~~(b)~~ (c) The Bonds authorized by this act to be
6 issued by the Authority shall be in addition to all other
7 bonds previously authorized to be issued by it, and the powers
8 conferred on the Authority by this act are in addition to all
9 other powers heretofore conferred on the Authority by acts
10 heretofore enacted by the Legislature.

11 Section 3. The Bonds shall be signed by the
12 president or vice-president of the Authority, and the seal of
13 the Authority affixed thereto (or a facsimile thereof
14 imprinted thereon) and attested by its secretary. All
15 signatures of the president, vice-president, and secretary may
16 be facsimile signatures if the Authority, in its proceedings
17 with respect to issuance, provides for manual authentication
18 (which may be in the form of a certificate as to registration)
19 of the Bonds by a trustee, registrar or paying agent or by
20 named individuals who are employees of the State and who are
21 assigned to the Finance Department or State Treasurer's Office
22 of the State. All Bonds bearing signatures or facsimiles of
23 the signatures of officers of the Authority in office on the
24 date of signing thereof shall be valid and binding
25 notwithstanding that before the delivery thereof and payment

1 therefor, any officer whose signature appears thereon shall
2 have ceased to be an officer of the Authority. The Bonds and
3 the income therefrom shall be exempt from all taxation in the
4 State of Alabama, may be used as security for deposits, and
5 shall be eligible for investments of fiduciary funds, as
6 provided in the 1965 Act. The Bonds shall be construed to have
7 all the qualities and incidents of negotiable instruments
8 subject to any registration provisions pertaining to
9 transfers. The Authority and the Bonds shall be exempt from
10 all laws of the State governing usury including, without
11 limitation, the provisions of Title 8, Chapter 8, Code of
12 Alabama 1975, or any subsequent statute of similar import. The
13 Bonds shall be in such form or forms and denomination or
14 denominations and of such tenor and maturities, shall bear
15 such rate or rates of interest payable and evidenced in such
16 manner, may be made subject to redemption prior to their
17 maturities, and may contain provisions not inconsistent with
18 this act, all as may be provided by the resolution of the
19 Authority under which the Bonds may be issued; provided, that
20 no Bonds shall have a specified maturity date later than
21 twenty years after their date; and provided further, that
22 those Bonds having maturities more than ten years after their
23 date shall be subject to redemption at the option of the
24 Authority on any date on and after the tenth anniversary after
25 their date at such redemption price or prices and under such

1 conditions as may be prescribed in the proceedings of the
2 Authority under which they are issued. For the purpose of
3 paying the principal of, premium, if any, and interest on the
4 Bonds or any Refunding Bonds, the Authority shall designate
5 the State Treasurer or such bank or banks as the Authority, in
6 its discretion, determines to be appropriate and desirable.
7 Funds for the payment of debt service shall be transferred by
8 the Authority or the State Treasurer on behalf of the
9 Authority to the designated paying agent on the actual due
10 date of such principal, premium, if any, or interest.

11 Section 4. The Bonds may be sold by the Authority
12 from time to time in series, and if sold in more than one
13 series, may all be authorized in one initial resolution of the
14 Authority with the pledges therefor made by the Authority in
15 such initial resolution although some of the details
16 applicable to each series may be specified in the respective
17 resolutions under which the different series are issued. Each
18 series of the Bonds shall be sold by negotiated sale or
19 competitively only at public sale, on sealed bids which may be
20 submitted either electronically or in writing, after such
21 advertisement as shall be prescribed by the Authority and at
22 such time or times as the Authority may consider advantageous,
23 to the bidder whose bid reflects the lowest true interest cost
24 to the Authority computed to the respective maturities of the
25 Bonds being sold (considering mandatory redemption as

1 scheduled maturity); provided, that if no bid deemed
2 acceptable by the Authority is received it may reject all
3 bids. The Authority may fix the method and the terms and
4 conditions under which the sale of any series of the Bonds may
5 otherwise be held; provided that such terms and conditions
6 shall not conflict with any requirement of this act. Approval
7 by the Governor of Alabama of the terms and conditions under
8 which any of the Bonds may be issued shall be requisite to
9 their validity. Neither a public hearing nor consent of the
10 State Department of Finance or any other department or agency
11 shall be a prerequisite to the issuance of any of the Bonds.

12 Section 5. In the event the Authority elects to sell
13 these bonds by negotiated sale, the Authority shall consult
14 with the Chairs of the House Education Appropriation Chair of
15 the House Education Appropriations Committee and the Chair of
16 the Senate Finance and Taxation - Education Committee during
17 the negotiations. The chairs shall make a report to members of
18 the above mentioned committees on the details of the
19 negotiated sale.

20 Section 6. (a) Notwithstanding Section 16-13-234 of
21 the Code of Alabama, 1975, for the purpose of providing for
22 payment of the principal, premium (if any), and interest on
23 the Bonds authorized by Section 2(a) of this act, and to
24 accomplish the objectives of this act, there is hereby
25 irrevocably pledged to those purposes, and hereby

1 appropriated, such amount as may be necessary therefor from
 2 the revenues of the Public School Fund, as created by Section
 3 260 of the Constitution of Alabama of 1901.

4 (b) For the purpose of providing for payment of the
 5 principal, premium (if any), and interest on the Bonds
 6 authorized by Section 2 of this act, there is hereby
 7 irrevocably pledged to those purposes, and hereby appropriated
 8 such amount as may be necessary therefor from the receipts
 9 from the excise taxes pledged and appropriated in Section 6 of
 10 Act 2007-415.

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

20 Section 7. The Bonds shall not be general
 21 obligations of the Authority but shall be limited obligations
 22 payable solely out of the residues of the revenues
 23 appropriated and pledged in ~~Section 5~~ Section 6 of this act.
 24 All Bonds issued by the Authority pursuant to the provisions
 25 of this act shall be solely and exclusively obligations of the

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

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

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

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

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

1 both, sufficient to pay, when due, the entire principal of,
2 premium, if any, and interest on the Bonds to be refunded
3 thereby; provided, that such Government Securities shall not
4 be subject to redemption prior to their maturities other than
5 at the option of the holder thereof. Upon the establishment of
6 such a trust or escrow fund, the refunded Bonds shall no
7 longer be deemed to be outstanding, shall no longer be secured
8 by the funds pledged therefor in ~~Section 5~~ Section 6 of this
9 act, shall no longer be obligations of the Authority and shall
10 be secured solely by and payable from monies and Government
11 Securities deposited in such trust or escrow fund.

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

1 (b) Proceeds from the sale of the Bonds authorized
2 in Section 2(a) of this act and the earnings thereon shall be
3 paid out from time to time on orders or warrants issued by or
4 at the direction of the Authority for the purposes specified
5 in this act, to include the following allocations:

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

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

24 Section 10. Notwithstanding any of the foregoing and
25 in addition to all powers heretofore granted to the Authority,

1 the Authority is hereby expressly authorized to use the
2 proceeds derived from the sale of Bonds and income on
3 Permitted Investments in accordance with the provisions of
4 this act. Additionally, the Authority is hereby expressly
5 permitted to pay to the Department of Finance and the State
6 Treasurer's Office, from time to time and from any funds
7 available to the Authority, amounts to offset costs incurred
8 in the administration of the business of the Authority. The
9 cost of such compensation shall be prorated among the
10 recipients of proceeds of the Bonds in the same manner as the
11 expenses of issuance of the Bonds are required hereby to be
12 prorated.

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

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

1 from, or excludible from gross income for purposes of, federal
2 income taxation.

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

1 Section 14. Withdrawal of Authority to Issue Bonds.
2 The Alabama Public School and College Authority shall not
3 issue any of the bonds provided for in Section 2(a) of this
4 act if, prior to the issuance of such bonds, the state
5 receives an amount greater than or equal to \$66,500,000 in
6 federal funds from a federal jobs bill, or other similar
7 federal act, enacted after March 1, 2010, and such funds may
8 be used by local boards of education for the purpose of school
9 bus fleet renewal.

10 Section 15. Severability. In the event any section,
11 sentence, clause or provision of this act shall be declared
12 invalid by a court of competent jurisdiction, such action
13 shall not affect the validity of the remaining sections,
14 sentences, clauses, or provisions of this act, which shall
15 continue effective.

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

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 30-MAR-10, as amended and was passed again as amended by Executive Amendment 21-APR-10. Yeas 92, Nays 0, Abstains 0.

Greg Pappas
Clerk

Senate	<hr/> 08-APR-10 <hr/>	Passed
Senate	22-APR-10	Passed, as amended by Exec. Amendment
	<hr/>	Yeas 27, Nays 0, Abstains 0