

1 HB78  
2 181278-1  
3 By Representative Sells  
4 RFD: County and Municipal Government  
5 First Read: 07-FEB-17  
6 PFD: 02/01/2017

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8 SYNOPSIS: This bill would require each municipality or  
9 a local school board to complete a bond financing  
10 review form developed by the Office of Examiners of  
11 Public Accounts when executing a bond financing  
12 agreement acknowledging that the municipality or  
13 local school board has considered the relevant  
14 factors important to the decision of entering into  
15 bonded indebtedness. This bill would also require  
16 that the form be submitted to the Office of  
17 Examiners of Public Accounts and made available for  
18 public inspection.

19  
20 A BILL  
21 TO BE ENTITLED  
22 AN ACT

23  
24 Relating to municipalities and local school boards;  
25 to require a municipality or local school board entering into  
26 a bond financing agreement to complete a bond financing review  
27 form developed by the Office of Examiners of Public Accounts

1 acknowledging that the municipality or local school board has  
2 considered the relevant factors important to the decision of  
3 entering into bonded indebtedness; and to require that the  
4 form be submitted to the Office of Examiners of Public  
5 Accounts and made available for public inspection.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. As used in this act, the following words  
8 shall have the following meanings:

9 (1) BOND FINANCING AGREEMENT. An agreement or other  
10 document relating to the sale or issuance of bonds, including,  
11 but not limited to, a bond purchase agreement, a loan  
12 agreement, a refinancing agreement, or documents providing for  
13 bonds sold or issued on a competitive sale basis.

14 (2) BONDS. Bonds, bond anticipation notes, warrants,  
15 warrant anticipation notes, or indebtedness issued or entered  
16 into on behalf of a municipality or local school board for a  
17 term of at least three years or more.

18 (3) BUSINESS DAY. A day, other than a Saturday or a  
19 Sunday, on which commercial banking institutions are open for  
20 business in the State of Alabama and a day on which the  
21 payment system of the Federal Reserve System is operational.

22 (4) CAPITAL EXPENDITURE. Any cost or expense of a  
23 type that is properly chargeable to a capital account under  
24 general federal income tax principles.

25 (5) GENERAL OBLIGATION INDEBTEDNESS. A bond  
26 financing agreement which, according to its terms, will be

1 repaid from any funds at the disposal of the municipality or  
2 local school board.

3 (6) GENERAL OPERATING EXPENSES. Any expense incurred  
4 by a county in the general operation and function of the  
5 county. The term includes salaries and other associated  
6 expenses, but does not include a capital expenditure or  
7 expense.

8 (7) LIMITED OBLIGATION INDEBTEDNESS. Bonds which,  
9 according to their terms, are required to be paid solely from  
10 the proceeds of a specific tax, fee, license, charge, or other  
11 specific revenue stream.

12 (8) NET PRESENT VALUE SAVINGS. The projected cost  
13 savings to the municipality or local school board from  
14 refinancing any bonds, by comparing the net present value of  
15 the costs of the bonds proposed for refunding, including the  
16 original costs of issuance and the payment of principal and  
17 interest on the bonds proposed for refunding, with the net  
18 present value of the costs of the proposed bonds, including  
19 the costs of issuance and refinancing and the payment of  
20 principal and interest on the proposed bonds.

21 (9) SWAP AGREEMENT. A swap agreement as defined in  
22 Article 3 of Chapter 1 of Title 41, Code of Alabama 1975.

23 Section 2. Notwithstanding any other provision of  
24 law, after the effective date of this act, no municipality or  
25 local school board may enter into any bond financing agreement  
26 or other transaction related to establishing bonded  
27 indebtedness that constitutes or creates an obligation, debt,

1 or charge against the credit or taxing power of the  
2 municipality or local school board until and unless the  
3 municipality or local school board has satisfied the  
4 requirements of this act.

5 Section 3. (a) In addition to any and all other  
6 documents presented for examination and execution of a bond  
7 financing agreement which, for the purposes of this act, takes  
8 place at the time a municipality or local school board makes  
9 an official award of the bonds, the municipality or local  
10 school board shall execute a Government Bond Financing Review  
11 Form. The standard review form shall be prepared by the Office  
12 of Examiners of Public Accounts and shall include statements  
13 to the effect that:

14 (1) The municipality or local school board has  
15 considered whether it can satisfy its financial obligations  
16 for the life of the bonds.

17 (2) In the case of limited obligation indebtedness,  
18 the municipality or local school board has identified the  
19 source for the debt service payments for the life of the bonds  
20 and, in the case of general obligation indebtedness, the  
21 municipality or local school board has indicated that the full  
22 faith and credit of the municipality or local school board has  
23 been pledged for the debt service payments for the life of the  
24 bonds.

25 (3) The municipality or local school board has  
26 considered the period of usefulness of the improvement or  
27 property for which the bonds are to be issued in light of the

1 duration of the term of the bonds under the bond financing  
2 agreement.

3 (4) The municipality or local school board  
4 acknowledges that bond proceeds shall not be used for general  
5 operating expenses of the municipality or local school board.

6 (5) The municipality or local school board has  
7 received from the bond underwriter, bond counsel, issuer's  
8 counsel, trustee, and any others associated with the issuance  
9 of bonds an itemized listing of their respective fees and all  
10 other costs which shall not be subject to change prior to the  
11 sale or issuance of bonds.

12 (6) The municipality or local school board has  
13 received from the bond underwriter a clear and understandable  
14 written proposal explaining all details of the proposed bond  
15 issue, its repayment schedule, and any external factors which  
16 could affect the total cost to the municipality or local  
17 school board if it issues the bonds.

18 (7) The municipality or local school board has  
19 considered the effect, if any, that the bonds will have on the  
20 municipality or local school board's constitutional debt  
21 limit.

22 (8) The municipality or local school board has  
23 received from the bond underwriter information demonstrating  
24 that the estimated interest rate on the bonds is reasonable  
25 and, that if information regarding similar recent issuances is  
26 available, the interest rates are comparable with other

1 similar issuances based on current bond market conditions on  
2 the date of execution of the bond financing agreement.

3 (b) If the proceeds of the proposed bonds are to be  
4 used in whole or in part for the purpose of refinancing or  
5 refunding outstanding bonds, the Government Bond Financing  
6 Review Form shall also include statements to the effect that:

7 (1) The municipality or local school board  
8 understands how the issuance of refunding bonds may extend the  
9 municipality or local school board's initial debt repayment  
10 period and the total cost paid by the municipality or local  
11 school board by the end of the refunding period.

12 (2) The municipality or local school board has  
13 considered whether the refunding bonds will create net present  
14 value savings for the municipality or local school board,  
15 including the costs of refinancing.

16 (c) In connection with a swap agreement, the  
17 Government Bond Financing Review Form shall include statements  
18 to the effect that:

19 (1) The municipality or local school board has  
20 complied with paragraph a. of subdivision (2) of Section  
21 41-1-42, Code of Alabama 1975.

22 (2) The municipality or local school board has  
23 reviewed or had explained by the adviser selected as provided  
24 in Section 5 all documentation provided pertaining to the swap  
25 agreement as required in subsection (d).

26 (3) The municipality or local school board has  
27 designated an employee or official who will have primary

1 responsibility for the consideration, execution, and  
2 monitoring of interest rate swaps and financial hedges entered  
3 into by the municipality or local school board.

4 (4) The municipality or local school board has  
5 determined whether the municipality or local school board's  
6 obligations under the swap agreement constitute a general  
7 obligation indebtedness of the municipality or local school  
8 board and whether the source of payment is sufficient.

9 (5) The municipality or local school board has  
10 sought and received specific information disclosing the  
11 potential risks inherent in the swap agreement including those  
12 risks commonly referred to in the derivatives industry as  
13 "basis risk," "tax risk," "interest rate risk," "counterparty  
14 risk," "termination risk," "market-access risk," "rollover or  
15 anticipation risk," and "credit risk."

16 (d) The Government Bond Financing Review Form shall  
17 also include a statement acknowledging that all enumerated  
18 items on the review form have been considered by the  
19 municipality or local school board, and that the municipality  
20 or local school board has voted to enter into the bond  
21 financing agreement or swap agreement by an affirmative vote  
22 of a majority of the members of the municipality or local  
23 school board. The statement of acknowledgment shall be signed  
24 by the chair of the municipality or local school board or  
25 another member designated by the municipality or local school  
26 board and the adviser or consultant utilized by the  
27 municipality or local school board pursuant to Section 5.



1                   (e) A copy of the Government Bond Financing Review  
2 Form shall be forwarded to the Office of Examiners of Public  
3 Accounts within 10 business days of the issuance of the bonds  
4 or swap agreement. All Government Bond Financing Review forms  
5 shall be kept on file at the Office of Examiners of Public  
6 Accounts and shall be available for public inspection for a  
7 period of seven years.

8                   Section 4. (a) In addition to the requirements of  
9 Section 3, the bond financing agreement documents shall  
10 include a detailed itemization of the costs and fees which  
11 will be paid directly by the municipality or local school  
12 board or from bond proceeds under the bond financing  
13 agreement. This itemization shall include a statement  
14 acknowledging that the amounts of these costs and fees have  
15 been presented and explained to all members of the  
16 municipality or local school board prior to the sale of bonds.  
17 The acknowledgement statement shall be signed by the chair of  
18 the municipality or local school board or another member  
19 designated by the municipality or local school board and by  
20 the authorized signatory for the bond underwriter.

21                   (b) In connection with a swap agreement, the  
22 documentation necessary to effectuate the swap agreement shall  
23 also include a statement from the authorized signatory for the  
24 bond underwriter or authorized signatory of the provider of  
25 the swap agreement to the effect that:

1           (1) It has provided the municipality or local school  
2 board with a disclosure of the potential risks inherent in the  
3 swap agreement.

4           (2) It has disclosed all fees associated with the  
5 swap agreement.

6           (3) It has provided the municipality or local school  
7 board with documentation necessary to effectuate the swap  
8 agreement including master agreements, schedules, credit  
9 support annexes, confirmations, legal opinions, fairness  
10 opinions, and any other information necessary to comply with  
11 subdivisions (3) and (5) of subsection (c) of Section 3.

12           Section 5. In preparing the Government Bond  
13 Financing Review Form, the municipality or local school board  
14 shall consult with and obtain advice from either an attorney  
15 for the municipality or local school board, or, at the option  
16 of the municipality or local school board, a certified public  
17 accountant regarding any and all bond or swap proposals  
18 received by the municipality or local school board. The person  
19 or persons utilized by the municipality or local school board  
20 for advice and consultation shall review all documents to be  
21 included at the execution of the bond financing agreement or  
22 swap agreement.

23           Section 6. This act shall become effective on  
24 October 1, 2017, following its passage and approval by the  
25 Governor, or its otherwise becoming law.