

1 HB322
2 127261-1
3 By Representative Wren
4 RFD: Ways and Means Education
5 First Read: 24-MAR-11

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8 SYNOPSIS: This bill authorizes county and city boards
9 of education, with the approval of the State
10 Superintendent of Education, to issue
11 interest-bearing warrants for educational purposes
12 payable from such revenues or tax proceeds as are
13 lawfully available. The warrants would be sold at
14 public or private sale, and the warrants would be
15 tax exempt.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT

20
21 Relating to financing for public education, to
22 authorize county and city boards of education to issue
23 interest-bearing warrants for educational purposes, with the
24 approval of the State Superintendent of Education, and payable
25 from such revenues or tax proceeds as are lawfully available;
26 the warrants would be sold at public or private sale, and the
27 warrants and interest thereon are tax exempt.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. (a) It is the intention of the
3 Legislature by the adoption of this act to authorize each
4 county board of education and each city board of education in
5 the State of Alabama to issue and sell, at public or private
6 sale, upon the prior written approval of the State
7 Superintendent of Education, warrants payable from, and
8 secured by a pledge of, any revenues of such board which are
9 lawfully available therefor, for educational and public school
10 purposes, including, without limitation, payment of the costs
11 of public school facilities and the refunding of valid
12 indebtedness of such board, regardless of whether such
13 indebtedness was incurred under this act or under other
14 provisions of law and regardless of whether such indebtedness
15 is a direct or indirect obligation of such board and to
16 authorize counties and municipalities to provide financial and
17 other assistance to boards of education within the
18 jurisdiction thereof.

19 (b) This act shall be liberally construed in
20 conformity with the foregoing intention to effect the purposes
21 of this act.

22 Section 2. The following terms, as used in this act,
23 shall have the following meanings:

24 (1) BOARD. A county board of education or a city
25 board of education

26 (2) COSTS. When used with reference to or in
27 connection with any public school facility or any portion

1 thereof, all or any part of the cost of acquiring,
2 constructing, altering, enlarging, extending, reconstructing,
3 or remodeling such facility, including the cost of all lands,
4 structures, real or personal property, rights, rights-of-way,
5 franchises, easements, permits, licenses, and interests
6 acquired or used for, in connection with, or with respect to
7 such public school facility, the cost of demolishing or
8 removing any buildings or structures on land so acquired,
9 including the cost of acquiring land to which such buildings
10 or structures may be moved, the cost of all machinery,
11 equipment, furniture, furnishings, fixtures, and tangible and
12 intangible personal property acquired or used for, in
13 connection with, or with respect to such public school
14 facility, the cost of architectural, engineering, financial,
15 and legal services incurred in connection with the acquisition
16 or construction of all or any part of such public school
17 facility and the financing thereof, including the expenses of
18 preparing plans, specifications, surveys, and studies to
19 determine the financial or engineering feasibility of such
20 public school facility, capitalized interest on money borrowed
21 to pay the costs of such public school facility prior to,
22 during, and for a period of not exceeding one year following
23 the estimated completion of the acquisition or construction of
24 such public school facility, amounts used to fund reserves for
25 the payment of debt service, repair and replacement costs, and
26 operating expenses, and such other expenses as may be incident

1 to the acquisition, construction, and financing of such public
2 school facility and the placement thereof in operation.

3 (3) PUBLIC PERSON. An agency, board, commission,
4 department, instrumentality, or corporation of the State of
5 Alabama; a county, municipality, or other political
6 subdivision of the State of Alabama; and a public authority,
7 board, or corporation created by a county or municipality or
8 of which a county or municipality is a member.

9 (4) PUBLIC SCHOOL FACILITIES. All tangible and
10 intangible property and interests in property, whether real,
11 personal, or mixed, used or useful for educational and public
12 school purposes and related purposes, including, without
13 limitation, land and rights or interests in land, school
14 buildings and playgrounds, classrooms, libraries, auditoriums,
15 gymnasiums, recreational and sport facilities, stadiums,
16 arenas, facilities for the performing arts, offices, school
17 buses, buildings for housing and repairing school buses,
18 cafeterias and dining facilities, laboratories, office
19 facilities, equipment, furniture and fixtures,
20 telecommunication facilities, heating and cooling facilities,
21 and related property.

22 (5) REFUNDABLE DEBT. With respect to any board, (i)
23 any valid indebtedness of the board evidenced by warrants
24 issued pursuant to this act, (ii) any valid indebtedness or
25 obligations of the board issued pursuant to any provision of
26 law other than this act, and (iii) any valid indebtedness or
27 obligations of the board incurred pursuant to any agreement of

1 the board to pay the valid indebtedness or obligation of
2 another public person.

3 (6) WARRANTS. The warrants authorized to be issued
4 by a board pursuant to this act.

5 Section 3. (a) In addition to all other notes,
6 obligations, warrants, and other forms or types of
7 indebtedness which a board shall have the power to issue
8 pursuant to laws other than this act, a board shall have full
9 and continuing power from time to time to issue and sell
10 warrants of the board under this act for educational and
11 public school purposes, including, without limitation, the
12 following:

13 (1) For the purpose of paying the costs of public
14 school facilities.

15 (2) For the purpose of paying or refunding all or
16 any portion, principal or interest or premium, of any
17 refundable debt then outstanding, whether the refunding shall
18 occur before, at, or after the maturity of the refundable debt
19 to be refunded.

20 (3) For the payment of extraordinary, nonrecurring
21 items that are not customarily payable from current revenues,
22 including, without limitation, casualty losses, legal
23 judgments, and payments due upon early termination of
24 contractual agreements or prepayment of indebtedness.

25 (4) For the purpose of providing any money or moneys
26 deemed necessary by the board to provide for the

1 administration and operation of the board to the expiration of
2 the fiscal year.

3 (5) For other purposes for which a board is
4 authorized by law to expend money.

5 (b) A board may issue refunding warrants in exchange
6 for the instruments evidencing the refundable debt to be
7 refunded, or a board may issue and sell refunding warrants and
8 apply the proceeds thereof to the purchase, redemption, or
9 payment of refundable debt. Refunding warrants may be issued
10 in the principal amount determined by the board, including,
11 without limitation, the following:

12 (1) The outstanding principal amount of the
13 refundable debt to be refunded.

14 (2) The interest accrued or to accrue on the
15 instruments evidencing the refundable debt to be refunded
16 until the respective maturities thereof, or if any of the
17 instruments evidencing the refundable debt to be refunded are
18 to be called for redemption, either on the earliest date on
19 which under their terms they may be redeemed or some later
20 date or dates, the interest accrued or to accrue thereon until
21 the date or dates on which they are to be called for
22 redemption.

23 (3) The amount of any redemption premium required,
24 by the terms of the instruments evidencing the refundable
25 debt, to be paid as a condition to their redemption prior to
26 their respective maturities.

1 (4) The amount of any costs, as defined in Section
2 5(d) (2), incurred in connection with the refunding.

3 (c) Each board shall have the power to enter into
4 and perform all contracts with banks or trust companies,
5 insurance or surety companies, governmental entities,
6 investment banking firms, and other persons to the extent that
7 such board determines that the contracts are necessary or
8 desirable to issue and sell warrants and to secure and provide
9 for the payment thereof.

10 (d) Any court having jurisdiction shall issue
11 mandamus for the payment of the principal of and interest on
12 warrants issued under this act, when and as the same becomes
13 due and payable, upon proper proof of nonpayment thereof, or
14 noncompliance with the provisions of law with respect thereto,
15 being furnished by or on behalf of any owner of any warrant
16 issued under this act.

17 Section 4. (a) Warrants issued under this act shall
18 not be general obligations of the board issuing the warrants,
19 but shall be payable solely from any revenues or tax proceeds
20 of the board which may be lawfully applied to the payment of
21 indebtedness of the board, including funds derived from any
22 one or more of the following sources:

23 (1) The proceeds of any ad valorem tax voted under
24 the constitution for the purpose of paying such warrants, or
25 for educational or public school purposes, and paid,
26 apportioned, allocated, or distributed to or for the benefit
27 of the board.

1 (2) The proceeds of any privilege, license, or
2 excise tax or taxes that may be paid, apportioned, allocated,
3 or distributed to or for the benefit of the board.

4 (3) The proceeds of any revenues of whatsoever kind
5 or nature, including, without limitation, payments pursuant to
6 agreements delivered pursuant to this act and payments in lieu
7 of taxes, that may be paid, apportioned, allocated, or
8 distributed to or for the benefit of the board by any
9 governmental or taxing authority or public person pursuant to
10 law or contractual agreement.

11 (b) Any board issuing any warrants under this act
12 shall specify, in the proceedings authorizing the warrants,
13 the tax proceeds or revenues out of which the warrants are to
14 be payable and may secure payment of the principal thereof and
15 the interest thereon by a pledge of so much as may be
16 necessary therefor of any of the tax proceeds or revenues.

17 (c) The pledge of any tax proceeds or revenues for
18 the payment of warrants issued by any board pursuant to this
19 act, together with any covenants of the board relating to the
20 pledge, shall have the force of contract between the board and
21 the owners of the warrants. To the extent necessary and
22 sufficient for making the payments secured by any pledge of
23 pledged tax proceeds or revenues made pursuant to this act,
24 the pledged tax proceeds or revenues shall constitute a trust
25 fund or funds which shall be impressed with a lien in favor of
26 the owners of the warrants to the payment of which the tax
27 proceeds or revenues are pledged. All warrants for which any

1 pledge authorized by this act may be made shall constitute
2 preferred claims against that portion of the tax proceeds or
3 revenues so pledged for the benefit thereof, and shall have
4 preference over any claims for salaries or other operating
5 expenses or any other purpose whatsoever. If more than one
6 pledge has been made with respect to the same portion of any
7 tax proceeds or revenues, then the pledge shall take
8 precedence in the order in which they are made; provided that,
9 if in the proceedings authorizing any such warrants and making
10 any pledge therefor the board reserves the privilege of
11 issuing additional warrants secured on a parity of pledge with
12 the warrants authorized by the proceedings, then the
13 additional warrants subsequently issued may be secured by such
14 parity pledge in accordance with the provisions of the
15 proceedings in which such privilege is reserved.

16 (d) A board may not pledge, for the benefit of any
17 warrants issued under this act, any portion of the Foundation
18 Program Fund moneys paid, apportioned, allocated, or
19 distributed to it by law, or any portion of Public School Fund
20 moneys paid, apportioned, allocated, or distributed to it by
21 law, or any other revenues or tax proceeds of the State of
22 Alabama paid, allocated, apportioned, or distributed to or for
23 the benefit of such board.

24 (e) A board may issue warrants under this act
25 payable from revenues of the board lawfully available therefor
26 and secured by a pledge of tax proceeds on an equal and
27 proportionate basis and parity of lien with outstanding

1 warrants theretofore issued by the board pursuant to laws
2 other than this act.

3 Section 5. (a) Warrants issued pursuant to this act
4 may be in the denomination or denominations; shall have a
5 maturity or maturities not exceeding 30 years from their date;
6 may bear interest from their date at the rate or rates payable
7 in the manner at the times specified; may be payable at the
8 place or places within or without the State of Alabama; may be
9 sold for the price, at the time or times, and in the manner,
10 whether publicly or privately, as provided in this act; may be
11 subject to prepayment and redemption, at the times, for such
12 prices, and upon the notice; and may contain the terms not in
13 conflict with this act; all as the board may provide in the
14 proceedings pursuant to which the warrants are authorized to
15 be issued. The board may provide that the warrants shall bear
16 interest at a rate or rates fixed at the time of the issuance
17 thereof, or at fixed rates which may be changed from time to
18 time during the term of the warrants in accordance with an
19 objective procedure determined by the board at the time of the
20 issuance of the warrants, or at a rate or rates which may
21 change from time to time in connection with published interest
22 rates or indices that reflect an objective response to market
23 changes in interest rates by banks, governmental agencies, or
24 other generally recognized public or private sources of
25 information concerning interest rates, and the board may also
26 provide that interest on the warrants may be payable in cash
27 at fixed intervals, or through one or more payments which

1 reflect compound interest computed at specified intervals on
2 accrued but unpaid interest, or through a discount in the
3 sales price for the warrants equivalent to compound interest
4 on the warrants for all or part of the term thereof, or
5 through any combination of the foregoing methods of providing
6 for the payment of interest.

7 (b) All warrants issued hereunder shall be executed
8 in the name of the issuing board by the president of the
9 board, shall be sealed with the seal of the board, and
10 attested by the secretary of the board. All warrants issued
11 hereunder bearing the signatures of officers in office on the
12 date of the signing thereof shall be valid and binding
13 obligations notwithstanding that before the delivery and
14 payment thereof, such officers whose signatures appear thereon
15 shall have ceased to be officers of the board.

16 (c) (1) All warrants issued under the authority of
17 this act shall be sold at public or private sale as the board
18 may determine and at such price or prices as the board may
19 deem advantageous.

20 (2) If the warrants are sold at public sale, the
21 public sale may be either on sealed bids or at auction or on a
22 basis determined by the board to enable it to effect the sale
23 of the warrants being sold at the lowest effective borrowing
24 cost to the board. Notice of any public sale shall be given in
25 the form and published in the manner and at the times as the
26 board of directors may determine and direct. The notice of
27 public sale shall state whether the sale is to be on sealed

1 bids or at auction or on such other basis as determined by the
2 board, and shall also recite the amount of the warrants to be
3 sold, the maturities thereof, the sources of payment and any
4 pledge of tax proceeds or revenues, the amount payable at each
5 maturity, any redemption or prepayment privileges, the
6 frequency with which interest will be payable, either the rate
7 of interest which the warrants are to bear or that the bidders
8 are invited to name the rate of interest in their bids, and
9 the time and place of sale or for submitting sealed bids. The
10 governing body shall have the right to reject any or all bids.
11 In determining the winning bidder for warrants offered for
12 sale at any public sale held pursuant to this act, the lowest
13 net interest cost to the board, as determined by the board,
14 shall govern. The determination of the board as to what
15 constitutes the lowest net interest cost shall be final and
16 conclusive.

17 (d) (1) The proceeds of warrants issued under this
18 act shall be used solely for the purpose for which the
19 warrants are authorized to be issued.

20 (2) The board may apply proceeds of warrants issued
21 under this act to the payment of the costs of issuing and
22 selling such warrants, including, without limitation,
23 underwriters' commissions and discounts, printing costs, fees
24 of rating services, fees and disbursements of attorneys,
25 accountants, financial advisors, and other consultants, fees
26 and disbursements of trustees and escrow agents, and other
27 incidental expenses, the costs of insurance, letters of

1 credit, or other third party commitments for the payment of
2 such warrants or other debt instruments obtained in order to
3 enhance the marketability thereof.

4 (3) Any proceeds of refunding warrants issued under
5 this act, together with investment income therefrom, and
6 moneys in any sinking fund for the refundable debt to be
7 refunded, together with investment income therefrom, may be
8 deposited in trust, on the terms as the board shall approve,
9 with one or more trustees or escrow agents, which trustees or
10 escrow agents shall be trust companies or national or state
11 banks having trust powers within or without the State of
12 Alabama. The proceeds of refunding warrants, together with the
13 investment income therefrom, and moneys in any sinking fund
14 for the refundable debt to be refunded, together with
15 investment income therefrom, shall be available for the
16 payment of all or any part of the principal of and the
17 interest on any of the refunding warrants or for the payment
18 of all or any part of the principal of and the interest and
19 redemption premium, if any, on the refundable debt to be
20 refunded, as the board, in its discretion, shall prescribe.
21 Proceeds of refunding warrants shall be so invested and
22 applied as to assure that the principal of and the interest
23 and redemption premium, if any, on the refundable debt to be
24 refunded shall be paid in full on the respective due dates of
25 such principal, interest, and premium.

26 (e) The proceeds of warrants issued under this act
27 may be invested in any debt obligation or other investment in

1 which a county or municipality may legally invest public
2 revenues at the time of investment by a board.

3 Section 6. (a) Before selling any warrants, the
4 board by which such warrants are proposed to be issued shall
5 cause an application for approval of the warrants to be filed
6 with the State Superintendent of Education. The application
7 shall be in such form and shall contain the information the
8 State Superintendent of Education may prescribe, and the
9 superintendent may require such further information relating
10 to the proposed warrants or other financial or education
11 matters under the control of such board of education. He or
12 she may not approve the issuance of any warrants: (i) If it
13 would jeopardize the state's Foundation Program of education,
14 as prescribed by law and the rules and regulations of the
15 State Board of Education, or (ii) When the principal of or
16 interest on any other notes or warrants previously issued by
17 the board are overdue and unpaid, except to refund the same.
18 The written approval of the State Superintendent of Education
19 of the amount, terms, and general purpose of the warrants
20 shall be a sufficient approval, but he or she may approve any
21 of the terms and provisions of the warrants which may not be
22 issued without the approval.

23 (b) The written approval of the State Superintendent
24 of Education of the issuance of any warrants shall be a
25 conclusive and final determination that all necessary evidence
26 has been presented to the superintendent and a conclusive and
27 final determination in favor the validity of the warrants that

1 all the requirements of this act have been complied with. The
2 State Superintendent of Education may also determine
3 conclusively and finally for all purposes relating to the
4 validity of any warrants issued whether any other warrants
5 constitute a preferred claim against the tax proceeds or
6 revenues out of which the proposed warrants are payable. In
7 all matters connected with his or her approval of warrants,
8 the State Superintendent of Education shall comply with any
9 regulations or instructions of the State Board of Education,
10 but his or her failure to do so shall not affect the validity
11 of the warrants approved by the State Superintendent of
12 Education.

13 Section 7. Warrants reciting that they are issued
14 pursuant to the terms of this act, in any action or proceeding
15 involving their validity, shall be conclusively deemed to be
16 fully authorized by this act and to have been issued, sold,
17 executed, and delivered in conformity with this act and with
18 all other provisions of law applicable thereto and shall be
19 incontestable. Anything in this act or in other statutes to
20 the contrary notwithstanding, an action or proceeding the
21 validity of warrants issued under this act must be begun
22 before or within 30 days after the day upon which the warrants
23 are issued and paid for. No irregularity in the proceedings to
24 authorize the issuance of warrants nor the omission or neglect
25 of any officer charged with any duties imposed by this act
26 shall affect the validity of any warrants issued.

1 Section 8. All warrants and interest accruing
2 thereon issued shall forever be exempt from all state, county,
3 municipal, and other taxation under the laws of the State of
4 Alabama.

5 Section 9. All warrants authorized by this act, in
6 the discretion of the board of education, may be validated in
7 a proceeding in accordance with Sections 6-6-750 through
8 6-6-757, Code of Alabama 1975, or any similar proceedings
9 prescribed by law, but such proceedings shall not be essential
10 to the validity of such warrants.

11 Section 10. The warrants issued pursuant to this act
12 shall be legal investments for executors, administrators,
13 trustees, and other fiduciaries.

14 Section 11. A county, with respect to the county
15 board of education within its jurisdiction, and a municipality
16 having a city board of education within its jurisdiction, with
17 respect to the board, and any municipality without a city
18 board of education, with respect to the county board of
19 education within the jurisdiction of which the municipality is
20 located, upon the terms and with or without consideration, as
21 it may determine, may:

22 (1) Lend or donate money to, guarantee all or any
23 part of the indebtedness or operating expense of, or perform
24 services for the benefit of, the board.

25 (2) Donate, sell, convey, transfer, lease, or grant
26 to the board, without the necessity of authorization at any
27 election of qualified voters, any property of any kind,

1 including, but without limitation, any project, any interest
2 in any thereof, and any franchise.

3 (3) Do any and all things, whether or not
4 specifically authorized in this section, not otherwise
5 prohibited by law, that are necessary or convenient to aid and
6 cooperate with the board in the planning, undertaking,
7 acquisition, construction, financing, or operation of any of
8 its public school facilities.

9 (4) Pay, or provide for the payment of, the
10 principal of or interest on any then outstanding notes,
11 warrants, or other obligations of the board.

12 (5) Issue its notes, warrants, bonds, and other
13 forms or types of indebtedness in order to provide moneys to
14 make any loan, donation, or payment authorized in this
15 section.

16 Section 12. Insofar as the provisions of this act
17 may be in conflict or inconsistent with any provisions of any
18 other law concerning actions authorized by this act, this act
19 shall control and govern, any other provision of law to the
20 contrary notwithstanding. Subject to the foregoing, this act
21 does and shall be construed to provide an additional and
22 alternative method for the doing of the things authorized by
23 this act and shall be regarded as supplemental and additional
24 to other laws.

25 Section 13. This act shall become effective on the
26 first day of the month following its passage and approval by
27 the Governor, or its otherwise becoming law.

