

1 SB219
2 128109-4
3 By Senator Waggoner
4 RFD: Finance and Taxation Education
5 First Read: 22-MAR-11

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to financing for public education, to
12 authorize county and city boards of education to issue
13 interest-bearing warrants for educational purposes, with the
14 approval of the State Superintendent of Education, and payable
15 from such revenues or tax proceeds as are lawfully available;
16 the warrants would be sold at public or private sale, and the
17 warrants and interest thereon are tax exempt.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. (a) It is the intention of the
20 Legislature by the adoption of this act to authorize each
21 county board of education and each city board of education in
22 the State of Alabama to issue and sell, at public or private
23 sale, upon the prior written approval of the State
24 Superintendent of Education, warrants payable from, and
25 secured by a pledge of, revenues of such board which are
26 lawfully available and are designated by the board therefor,
27 for educational and public school purposes, including, without

1 limitation, payment of the costs of public school facilities
2 and the refunding of valid indebtedness of such board,
3 regardless of whether such indebtedness was incurred under
4 this act or under other provisions of law and regardless of
5 whether such indebtedness is a direct or indirect obligation
6 of such board and to authorize counties and municipalities to
7 provide financial and other assistance to boards of education
8 within the jurisdiction thereof.

9 (b) This act shall be liberally construed in
10 conformity with the foregoing intention to effect the purposes
11 hereof.

12 Section 2. The following terms as used in this act
13 shall have the following meanings:

14 (1) Board. Any county board of education and any
15 city board of education.

16 (2) Costs. When used with reference to or in
17 connection with any public school facility or any portion
18 thereof, all or any part of the costs of acquiring,
19 constructing, altering, enlarging, extending, reconstructing
20 or remodeling such facility, including (i) the costs of all
21 lands, structures, real or personal property, rights,
22 rights-of-way, franchises, easements, permits, licenses and
23 interests acquired or used for, in connection with or with
24 respect to such public school facility; (ii) the costs of
25 demolishing or removing any buildings or structures on land so
26 acquired, including the costs of acquiring land to which such
27 buildings or structures may be moved; (iii) the costs of all

1 machinery, equipment, furniture, furnishings, fixtures and
2 tangible and intangible personal property acquired or used
3 for, in connection with or with respect to such public school
4 facility; and (iv) the costs of architectural, engineering,
5 financial and legal services incurred in connection with the
6 acquisition or construction of all or any part of such public
7 school facility and the financing thereof, including the
8 expenses of preparing plans, specifications, surveys, and
9 studies to determine the financial or engineering feasibility
10 of such public school facility.

11 (3) Public Person. Any agency, board, commission,
12 department, instrumentality or corporation of the State of
13 Alabama, any county, municipality or other political
14 subdivision of the State of Alabama, and any public authority,
15 board or corporation created by any county or municipality or
16 of which any county or municipality is a member.

17 (4) Public School Facilities. All tangible and
18 intangible property and interests in property, whether real,
19 personal or mixed, used or useful for educational and public
20 school purposes and related purposes, including without
21 limitation land and rights or interests in land, school
22 buildings and playgrounds, classrooms, libraries, auditoriums,
23 gymnasiums, recreational and sport facilities, stadiums,
24 arenas, facilities for the performing arts, offices, school
25 buses, buildings for housing and repairing school buses,
26 cafeterias and dining facilities, laboratories, office
27 facilities, equipment, furniture and fixtures,

1 telecommunication facilities, heating and cooling facilities,
2 and related property.

3 (5) Refundable Debt. With respect to any board, (i)
4 any valid indebtedness of such board evidenced by warrants
5 issued pursuant to the provisions of this act, and (ii) any
6 valid indebtedness or obligations of such board issued
7 pursuant to any provision of law other than this act, and
8 (iii) any valid indebtedness or obligations of such board
9 incurred pursuant to any agreement (including without
10 limitation a funding agreement or lease agreement) by such
11 board and a public person whereunder such board shall make
12 payments (including without limitation rental payments) to
13 such public person to enable such public person to pay valid
14 indebtedness or obligations thereof incurred for the benefit
15 of such board, and (iv) any valid indebtedness or obligations
16 of any public person incurred on behalf, or for the benefit,
17 of such board.

18 (6) State Superintendent. The State Superintendent
19 of Education and any successor to the functions thereof.

20 (7) Warrants. The warrants authorized to be issued
21 by a board pursuant to this act.

22 Section 3. (a) In addition to all other notes,
23 obligations, warrants, and other forms or types of
24 indebtedness which any board shall have the power to issue
25 pursuant to laws other than this act, each board shall have
26 full and continuing power from time to time to issue and sell

1 warrants for educational and public school purposes,
2 including, without limitation, the following:

3 (1) For the purpose of paying the costs of public
4 school facilities.

5 (2) For the purpose of paying or refunding all or
6 any portion (principal or interest or premium) of any
7 refundable debt then outstanding, whether such refunding shall
8 occur before, at, or after the maturity of the refundable debt
9 to be refunded.

10 (3) For the payment of extraordinary, nonrecurring
11 items that are not customarily payable from current revenues,
12 including, without limitation, casualty losses, legal
13 judgments, and payments due upon early termination of
14 contractual agreements or prepayment of indebtedness.

15 (4) For the purpose of providing any money or moneys
16 deemed necessary by the board to provide for the
17 administration and operation of the board to the expiration of
18 the then current fiscal year.

19 (5) For such other purposes for which a board is
20 authorized by law to expend money.

21 (b) A board may issue refunding warrants in exchange
22 for the instruments evidencing the refundable debt to be
23 refunded, or a board may issue and sell refunding warrants and
24 apply the proceeds thereof to the purchase, redemption, or
25 payment of refundable debt. Refunding warrants may be issued
26 in such principal amount as shall be determined by the board,
27 including, without limitation: (i) the outstanding principal

1 amount of the refundable debt to be refunded, (ii) the
2 interest accrued or to accrue on the instruments evidencing
3 the refundable debt to be refunded until the respective
4 maturities thereof, or if any of the instruments evidencing
5 the refundable debt to be refunded are to be called for
6 redemption (either on the earliest date on which under their
7 terms they may be redeemed or some later date or dates), the
8 interest accrued or to accrue thereon until the date or dates
9 on which they are to be called for redemption, (iii) the
10 amount of any redemption premium required, by the terms of the
11 instruments evidencing the refundable debt, to be paid as a
12 condition to their redemption prior to their respective
13 maturities, and (iv) the amount of any costs (as described in
14 Section 5(d)(2)) incurred in connection with such refunding.

15 (c) Each board shall have the power to enter into
16 and perform all agreements and contracts for the services of
17 paying agents and trustees with respect to warrants issued
18 under this act, for the purchase of warrants issued under this
19 act, and for the guarantee or insurance, pursuant to standby
20 letters of credit, municipal bond insurance policies, or
21 similar instruments or credit facilities, of the payment, when
22 due, of the principal of, premium (if any) on, and interest
23 on, warrants issued under this act, to the extent that such
24 board determines, in its discretion, that any of such
25 agreements and contracts are necessary and desirable.

26 (d) Any court having jurisdiction shall issue
27 mandamus for the payment of the principal of and interest on

1 warrants issued under this act, when and as the same becomes
2 due and payable, upon proper proof of nonpayment thereof, or
3 noncompliance with the provisions of law with respect thereto,
4 being furnished by or on behalf of any owner of any warrant
5 issued under this act.

6 Section 4. (a) Warrants issued under the provisions
7 of this act shall not be general obligations of the board
8 issuing such warrants but shall be payable solely from the
9 designated revenues or tax proceeds of the board which may be
10 lawfully applied to the payment of indebtedness of such board,
11 including funds derived from any one or more of the following
12 sources:

13 (1) The proceeds of any ad valorem tax or taxes
14 levied for the purpose of paying such warrants, or for
15 educational or public school purposes, and paid, apportioned,
16 allocated, or distributed to or for the benefit of the board.

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

20 (3) Any revenues of whatsoever kind or nature
21 (including, without limitation, payments pursuant to
22 agreements delivered pursuant to this act and payments in lieu
23 of taxes) that may be paid, apportioned, allocated, or
24 distributed to or for the benefit of the board by any
25 governmental or taxing authority or public person pursuant to
26 law or contractual agreement.

1 (b) Any board issuing any warrants hereunder shall
2 specify, in the proceedings authorizing such warrants, the tax
3 proceeds or revenues out of which such warrants are to be
4 payable and may secure payment of the principal of, premium
5 (if any) on, and the interest on, such warrants by a pledge of
6 so much as may be necessary therefor of any of such tax
7 proceeds or revenues.

8 (c) The pledge of any tax proceeds or other revenues
9 for the payment of warrants issued by any board pursuant to
10 this act, together with any covenants of such board relating
11 to such pledge, shall have the force of contract between such
12 board and the owners of such warrants. To the extent necessary
13 and sufficient for making the payments secured by any pledge
14 of pledged tax proceeds or revenues made pursuant to the
15 provisions of this act, such pledged tax proceeds or revenues
16 shall constitute a trust fund or funds which shall be
17 impressed with a lien in favor of the owners of the warrants
18 to the payment of which such tax proceeds or revenues are
19 pledged. All warrants for which any pledge authorized by the
20 provisions of this act may be made shall constitute preferred
21 claims against that portion of the tax proceeds or revenues so
22 pledged for the benefit thereof, and shall have preference
23 over any claims for salaries or other operating expenses or
24 any other purpose whatsoever. If more than one such pledge
25 shall be made with respect to the same portion of any such tax
26 proceeds or revenues, then such pledges shall take precedence
27 in the order in which they are made; provided that, if in the

1 proceedings authorizing any such warrants and making any such
2 pledge therefor the board reserves the privilege of issuing
3 additional warrants secured on a parity of pledge with the
4 warrants authorized by the said proceedings, then such
5 additional warrants subsequently issued may be secured by such
6 parity pledge in accordance with the provisions of the said
7 proceedings in which such privilege is reserved.

8 (d) Nothing in this act shall operate or be
9 construed to authorize or permit any board to pledge, for the
10 benefit of any warrants issued hereunder, any portion of the
11 Foundation Program Fund moneys paid, apportioned, allocated,
12 or distributed to it by law, or any portion of Public School
13 Fund moneys paid, apportioned, allocated, or distributed to it
14 by law, or any other revenues or tax proceeds of the State of
15 Alabama paid, allocated, apportioned, or distributed to or for
16 the benefit of such board.

17 (e) The proceeds of all taxes, and all revenues, of
18 a board which are designated as a source of payment of, or
19 pledged as security for, any warrants issued under this act
20 may, after payment of the principal of, premium (if any) on,
21 and interest on such warrants shall have been made, or
22 provision made therefor, in any fiscal year be used for any
23 lawful purpose.

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

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

3 Section 5. (a) (1) Warrants issued pursuant to this
4 act 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 and at the times; may be payable at the place or
8 places within or without the State of Alabama; may be sold for
9 such price and in the manner as provided in this act; and may
10 contain the terms not in conflict with the provisions of this
11 act; all as the board may provide in the proceedings pursuant
12 to which the warrants are authorized to be issued.

13 (2) (i) The board may provide that the warrants shall
14 bear interest at a rate or rates fixed at the time of the
15 issuance thereof.

16 (ii) With the prior, specific approval of the State
17 Superintendent, given as provided in this act, the board may
18 provide that the warrants shall bear interest at rates which
19 may be changed from time to time during the term of the
20 warrants in accordance with an objective procedure determined
21 by the board at the time of the issuance of the warrants, or
22 at a rate or rates which may change from time to time in
23 connection with published interest rates or indices that
24 reflect an objective response to market changes in interest
25 rates by banks, governmental agencies, or other generally
26 recognized public or private sources of information concerning
27 interest rates.

1 (3) (i) A board may retain in the proceedings of such
2 board authorizing the issuance of warrants under this act an
3 option to redeem all or any part thereof as may be specified
4 in such proceedings at such price or prices and after such
5 notice or notices and on such terms and conditions as may be
6 set forth in such proceedings and as may be briefly recited in
7 the face of such warrants.

8 (ii) A board which may issue warrants having a
9 stated maturity more than 10 years after the date thereof
10 shall retain in the proceedings authorizing the issuance of
11 such warrants an option to redeem at the expiration of the
12 tenth year following the date of such warrants and on any date
13 subsequent thereto all or any part of such warrants having
14 stated maturities subsequent to the expiration of the tenth
15 year after their date at such price or prices and after such
16 notice or notices and on such terms and conditions as may be
17 set forth in such proceedings and briefly recited in the face
18 of such warrants.

19 (b) All warrants issued hereunder shall be executed
20 in the name of the issuing board by the president of such
21 board, shall be sealed with the seal of such board, and
22 attested by the secretary of such board. All warrants issued
23 hereunder bearing the signatures of officers in office on the
24 date of the signing thereof shall be valid and binding
25 obligations notwithstanding that before the delivery and
26 payment thereof, such officers whose signatures appear thereon
27 shall have ceased to be officers of such board.

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

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

8 (2) The board may apply proceeds of warrants issued
9 under this act to the payment of the costs of issuing and
10 selling such warrants, including, without limitation,
11 underwriters' commissions and discounts, printing costs, fees
12 of rating services, fees and disbursements of attorneys,
13 accountants, financial advisors, and other consultants, fees
14 and disbursements of trustees and paying agents, and other
15 incidental expenses, the costs of municipal bond insurance
16 policies or standby letters of credit or similar instruments
17 or credit facilities which provide for payment of the
18 principal of, premium (if any) on, and interest on, such
19 warrants when due and payable.

20 (3) Any proceeds of refunding warrants issued under
21 this act, together with investment income therefrom, and
22 moneys in any sinking fund for the refundable debt to be
23 refunded, together with investment income therefrom, may be
24 deposited in trust, on such terms as the board shall approve,
25 with one or more trustees or escrow agents, which trustees or
26 escrow agents shall be trust companies or national or state
27 banks having trust powers within or without the State of

1 Alabama. The proceeds of refunding warrants, together with the
2 investment income therefrom, shall be available for the
3 payment of all or any part of the principal of and the
4 interest on any of the refunding warrants or for the payment
5 of all or any part of the principal of and the interest and
6 redemption premium, if any, on the refundable debt to be
7 refunded, as the board, in its discretion, shall prescribe.
8 Proceeds of refunding warrants shall be so invested and
9 applied as to assure that the principal of and the interest
10 and redemption premium, if any, on the refundable debt to be
11 refunded shall be paid in full on the respective due dates of
12 such principal, interest, and premium.

13 (e) The proceeds of warrants issued under this act
14 may be invested in any debt obligation or other investment in
15 which a county or municipality in the State of Alabama is
16 authorized to invest public funds at the time of investment by
17 a board.

18 Section 6. (a) A board shall obtain the prior
19 written approval of the State Superintendent for the issuance
20 of any warrants under this act. Before entering into any
21 agreement or contract for the issuance and sale, and before
22 the issuance and sale, of any warrants under this act, the
23 board by which such warrants are proposed to be issued shall
24 cause an application for approval of such warrants to be filed
25 with the State Superintendent. Such application shall be in
26 such form and shall contain such information as the State
27 Superintendent may prescribe, and the State Superintendent may

1 require such further information he or she may deem necessary
2 relating to the proposed warrants or other financial or
3 educational matters under the control of such board. The State
4 Superintendent shall not approve the issuance of any warrants
5 hereunder (i) if it would jeopardize the state's Foundation
6 Program of education, as prescribed by law and the rules and
7 regulations of the State Board of Education or (ii) when the
8 principal of or interest on any other notes or warrants
9 previously issued by such board are overdue and unpaid, except
10 to refund the same. The written approval of the State
11 Superintendent of the amount, terms, and general purpose of
12 the warrants shall be a sufficient approval thereof.

13 (b) The written approval of the State Superintendent
14 of the issuance of any warrants hereunder shall be a
15 conclusive and final determination that all necessary evidence
16 has been presented to the State Superintendent and a
17 conclusive and final determination in favor of the validity of
18 such warrants that all the requirements of this act have been
19 complied with. The State Superintendent may also determine
20 conclusively and finally for all purposes relating to the
21 validity of any warrants issued hereunder whether any other
22 warrants constitute a preferred claim against the tax proceeds
23 or revenues out of which the proposed warrants are payable. In
24 all matters connected with his or her approval of warrants,
25 the State Superintendent shall comply with any regulations or
26 instructions of the State Board of Education, but failure to

1 do so shall not affect the validity of the warrants approved
2 by the State Superintendent.

3 Section 7. Warrants reciting that they are issued
4 pursuant to the terms of this act shall in any action or
5 proceeding involving their validity be conclusively deemed to
6 be fully authorized thereby and to have been issued, sold,
7 executed, and delivered in conformity therewith and with all
8 other provisions of law applicable thereto and shall be
9 incontestable, anything herein or in other statutes to the
10 contrary notwithstanding.

11 Section 8. All warrants and interest accruing
12 thereon issued hereunder shall forever be exempt from all
13 state, county, municipal, and other taxation under the laws of
14 the State of Alabama.

15 Section 9. The warrants issued pursuant to the
16 provisions of this act shall be legal investments for
17 executors, administrators, trustees, and other fiduciaries.

18 Section 10. Any county may, with respect to the
19 county board of education within its jurisdiction and any city
20 board of education within, in whole or in part, its
21 jurisdiction, and any municipality may, with respect to the
22 city board of education (if any) within its jurisdiction and
23 with respect to the county board of education for each county
24 within the jurisdiction of which all or any part of such
25 municipality is located, upon such terms and with or without
26 consideration, as it may determine:

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

4 (2) Donate, sell, convey, transfer, lease, or grant
5 to such board, without the necessity of authorization at any
6 election of qualified voters, any property of any kind,
7 including, without limitation, any project, any interest in
8 any thereof, and any franchise.

9 (3) Do any and all things, whether or not
10 specifically authorized in this section, not otherwise
11 prohibited by law, that are necessary or convenient to aid and
12 cooperate with such board in the planning, undertaking,
13 acquisition, construction, financing, or operation of any of
14 its public school facilities.

15 (4) Pay, or provide for the payment of, the
16 principal of or interest on any then outstanding notes,
17 warrants, or other obligations of such board.

18 (5) Issue its notes, warrants, bonds, and other
19 forms or types of indebtedness in order to provide moneys to
20 make any loan, donation, or payment authorized in this
21 section.

22 Section 11. (a) Upon the request of a public person
23 who shall have issued or incurred obligations for the benefit
24 of a board and for a purpose or purposes for which a board
25 could issue warrants under this act, and upon compliance with
26 the following terms and conditions, a board may undertake,
27 pursuant to a contractual agreement with such public person,

1 to pay such amounts to, or for the account of, such public
2 person at such times and in such amounts as shall be
3 sufficient to pay all, or such portion as such board and such
4 public person shall determine, of the principal of, premium
5 (if any), and interest on such obligations when and as due and
6 payable.

7 (b) The obligations of a public person which a board
8 is authorized to support by a contractual agreement under
9 subsection (a) of Section 11 shall be in such denomination,
10 mature at such time or times, bear interest at such rate, be
11 subject to redemption, and contain such other terms, as are
12 authorized or required for warrants issued by a board under
13 this act.

14 (c) Any contractual agreement delivered by a board
15 under this act shall be payable solely from, and secured by,
16 the funds and revenues of such board described in this act
17 which such board could apply to the payment of warrants issued
18 by such board under this act.

19 (d) Prior to the delivery of any contractual
20 agreement under this act, a board shall obtain the written
21 approval of the State Superintendent for the terms thereof in
22 the form and manner required by the State Superintendent
23 therefor and such approval shall be essential to the validity
24 and enforceability of such contractual agreement.

25 Section 12. Insofar as the provisions of this act
26 may be in conflict or inconsistent with any provisions of any
27 other law concerning actions authorized by this act, the

1 provisions of this act shall control and govern, any other
2 provision of law to the contrary notwithstanding. Subject to
3 the foregoing, this act does and shall be construed to provide
4 an additional and alternative method for the doing of the
5 things authorized thereby and shall be regarded as
6 supplemental and additional to other laws.

7 Section 13. In the event that any provision of this
8 act shall be held or declared invalid or unenforceable by any
9 court of competent jurisdiction, such holding shall not
10 invalidate or render unenforceable any other provision hereof.

11 Section 14. This act shall become effective on the
12 first day of the second month following its passage and
13 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Finance and Taxation Education 22-MAR-11

Read for the second time and placed on the calen-
dar with 1 substitute and..... 31-MAR-11

Read for the third time and passed as amended 27-APR-11

Yeas 30
Nays 0

Patrick Harris
Secretary