

1 SB192  
2 147770-5  
3 By Senators Bussman, Allen, Reed, Pittman, Fielding, Williams,  
4 McGill, Glover, Scofield, Brewbaker, Taylor, Keahey, Figures,  
5 Coleman, and Dunn  
6 RFD: Commerce, Transportation, and Utilities  
7 First Read: 12-FEB-13

2  
3  
4 ENGROSSED

5  
6  
7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To amend Sections 23-1-174, 23-1-177, 23-1-178, and  
12 23-1-181 of the Code of Alabama 1975, to add the Governor as a  
13 member of the corporation; to designate the officers of the  
14 corporation; to allow the borrowing authority of the  
15 corporation to be not more than \$25 million in aggregate  
16 principal amount of bonds of the corporation outstanding at  
17 any time for the purpose of financing the state's share of the  
18 cost of constructing roads, bridges, and related improvements;  
19 and to provide matching funds otherwise to be paid by counties  
20 or municipalities for local roadway, bridge, and related  
21 improvement projects awarded through the Rural Assistance  
22 Match Program and administered by the Alabama Department of  
23 Transportation.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Sections 23-1-174, 23-1-177, 23-1-178,  
26 and 23-1-181, Code of Alabama 1975, are amended to read as  
27 follows:

1           "§23-1-174.

2           ~~"The applicants named in the application and their~~  
3 ~~respective successors in office shall constitute the~~ members  
4 of the corporation shall consist of the Governor, the Director  
5 of Transportation, the Attorney General, and the Director of  
6 Finance and their respective successors in office. The  
7 ~~Director of Transportation~~ Governor shall be the president of  
8 the corporation, the ~~Attorney General~~ Director of Finance  
9 shall be its vice-president, the Director of ~~Finance~~  
10 Transportation shall be the secretary of the corporation, and  
11 the State Treasurer shall be the treasurer of the corporation  
12 and shall act as custodian of its funds. The members of the  
13 corporation shall constitute all the members of the board of  
14 directors of the corporation, and any ~~two~~ three members of the  
15 ~~said~~ board of directors shall constitute a quorum for the  
16 transaction of business. Should any of ~~said~~ the officials of  
17 the state die or should his or her term of office as Governor,  
18 Director of Transportation, Attorney General, or Director of  
19 Finance, as the case may be, expire or should he or she resign  
20 therefrom, ~~his~~ the successor in office shall take ~~his~~ the  
21 place as a member, officer, and director of the corporation.  
22 No member, officer, or director of the corporation shall draw  
23 any salary, in addition to that now authorized by law, for any  
24 service he or she may render or any duty he or she may perform  
25 in connection with the corporation. All proceedings had and  
26 done by the board of directors shall be reduced to writing by  
27 the secretary of the corporation and recorded in a

1 substantially bound book. Copies of such proceedings, when  
2 certified by the secretary of the corporation under the seal  
3 of the corporation, shall be received in all courts as prima  
4 facie evidence of the matters and things therein certified.

5 "§23-1-177.

6 "(a) The bonds of the corporation shall be signed by  
7 its president and attested by its secretary, and the seal of  
8 the corporation shall be affixed thereto or printed or  
9 otherwise reproduced thereon, ~~and any interest coupons~~  
10 ~~applicable to such bonds shall be signed by the president;~~  
11 provided, that a facsimile of the signature of one, but not  
12 both, of ~~said~~ the officers may be printed or otherwise  
13 reproduced on any such bonds in lieu of his or her signing the  
14 same ~~and a facsimile of the president's signature may be~~  
15 ~~printed or otherwise reproduced on any such interest coupons~~  
16 ~~in lieu of his signing the same.~~

17 "(b) Any bonds of the corporation may be executed  
18 and delivered by it at any time and from time to time, shall  
19 be in such form and denominations and of such tenor and  
20 maturities, shall bear such rate or rates of interest payable  
21 and evidenced in such manner, may contain provisions for  
22 redemption prior to maturity, and may contain such other  
23 provisions not inconsistent with this article, all as may be  
24 provided by the resolution of the board of directors under  
25 which such bonds are authorized to be issued; provided, that  
26 no bond of the corporation shall have a specified maturity  
27 date later than ~~20~~ 30 years after its date.

1           "(c) Bonds of the corporation may be sold from time  
2 to time as the board of directors may deem advantageous and  
3 without regard to principal amount; provided, that at no time  
4 shall the aggregate principal amount of bonds of the  
5 corporation, ~~other than~~ including without limitation refunding  
6 bonds, ~~which may be issued under this article after February~~  
7 ~~1, 1978, shall be limited to \$25,000,000.00; and provided,~~  
8 ~~further, that no~~ be outstanding in excess of twenty-five  
9 million dollars (\$25,000,000). The principal amount of bonds  
10 for which provision for payment has been made with proceeds of  
11 refunding bonds or with other funds provided for such purpose,  
12 including anticipated investment earnings thereon, shall not  
13 be deemed outstanding for purposes hereof. No bonds, other  
14 than refunding bonds, may be sold or issued by the corporation  
15 unless the Governor shall have first determined that the  
16 issuance of the bonds proposed to be issued will be necessary  
17 to assure the availability of funds for payment of the state's  
18 share of the cost of roads and bridges, or the share of the  
19 same to otherwise be paid by counties or municipalities within  
20 the state for local roadway or bridge and related improvement  
21 projects through a program titled the Rural Assistance Match  
22 Program that shall from time to time be constructed with funds  
23 supplied jointly by the state and the federal government.

24           "~~(d) Bonds of the corporation must be sold only at~~  
25 ~~public sale, either on sealed bids or at public auction at, to~~  
26 ~~the bidder whose bid reflects the lowest net interest cost to~~  
27 ~~the corporation for the bonds being sold, computed to their~~

1 ~~relative maturities; provided, that if no bid acceptable to~~  
2 ~~the corporation is received it may reject all bids. Notice of~~  
3 ~~each such sale shall be given by publication in either a~~  
4 ~~financial journal or a financial newspaper published in the~~  
5 ~~City of New York, New York and also by publication in a~~  
6 ~~newspaper published in the State of Alabama that is~~  
7 ~~customarily published not less often than five days during~~  
8 ~~each calendar week, each of which notices must be published at~~  
9 ~~least one time not less than 10 days prior to the date fixed~~  
10 ~~for the sale. The board of directors may fix the terms and~~  
11 ~~conditions under which each such sale may be held; provided,~~  
12 ~~that none of the bonds may be sold for a price less than the~~  
13 ~~face value thereof; and provided, further, that such terms and~~  
14 ~~conditions shall not conflict with any of the requirements of~~  
15 ~~this article. Bonds of the corporation may be sold at private~~  
16 ~~sale or public sale, but if at public sale, only to the bidder~~  
17 ~~whose bid reflects the lowest net interest cost to the~~  
18 ~~corporation for the bonds being sold, computed to their~~  
19 ~~relative maturities, in such manner and at such price or~~  
20 ~~prices and at such time or times as may be determined by the~~  
21 ~~board of directors to be most advantageous.~~

22 "(e) Subject to the provisions and limitations  
23 contained in this article, the corporation may from time to  
24 time sell and issue refunding bonds in aggregate principal  
25 amounts that may exceed the principal amount of bonds being  
26 refunded for the purpose of refunding any matured or unmatured  
27 bonds of the corporation ~~then outstanding~~. Approval by the

1 Governor of Alabama of the terms and conditions under which  
2 any refunding bonds of the corporation may be issued shall be  
3 requisite to their validity. Such approval shall be entered on  
4 the minutes of the meetings of the board of directors at which  
5 the refunding bonds are authorized and shall be signed by the  
6 Governor. ~~Such approval by the Governor may be shown on any  
7 such bonds by a facsimile of his signature printed or  
8 otherwise reproduced thereon when authorization thereof is  
9 contained in the said approval signed by him.~~

10 "(f) The corporation may pay out of the proceeds  
11 from the sale of its bonds all expenses, including fees of  
12 attorneys, the fees of financial advisors, and other charges,  
13 which ~~said~~ the board of directors may deem necessary and  
14 advantageous in connection with the issuance of such bonds.  
15 Bonds issued by the corporation shall not be general  
16 obligations of the corporation but shall be payable solely out  
17 of the funds appropriated and pledged therefor by act of the  
18 Legislature or out of such fund or revenue as are herein  
19 permitted to be pledged and used for such purposes. As  
20 security for the payment of the principal of, and interest on,  
21 any bonds issued by it, the corporation is hereby authorized  
22 and empowered to pledge for payment of such principal and  
23 interest the funds that are appropriated and pledged by act of  
24 the Legislature for payment of ~~said~~ the principal and  
25 interest, or such funds or revenues as are herein permitted to  
26 be used for payment of the principal and interest.

1           "(g) All contracts made and all bonds issued by the  
2 corporation pursuant to the provisions of this article shall  
3 be solely and exclusively obligations of the corporation and  
4 shall not be an obligation or debt of any kind of the State of  
5 Alabama. Bonds issued by the corporation when not registered  
6 shall be construed to be negotiable instruments although  
7 payable solely from a specified source as provided in this  
8 article. All bonds issued by the corporation and the income  
9 therefrom shall be exempt from all taxation in the State of  
10 Alabama. Any bonds issued by the corporation may be used by  
11 the holder thereof as security for any funds belonging to the  
12 state or to any instrumentality or agency of the state in any  
13 instance where security for such deposits may be required by  
14 law.

15           "(h) Unless otherwise directed by the court having  
16 jurisdiction thereof or by the document that is the source of  
17 authority, a trustee, executor, administrator, guardian, or  
18 one acting in any other fiduciary capacity may, in addition to  
19 any other investment powers conferred by law and with the  
20 exercise of reasonable business prudence, invest trust and  
21 other fiduciary funds in bonds of the corporation.

22           "(i) Neither a public hearing nor consent by the  
23 state Department of Finance or any other department or agency  
24 shall be a prerequisite to the issuance of bonds by the  
25 corporation. All obligations issued by the corporation shall  
26 be exempt from the laws of the state governing usury or  
27 prescribing or limiting interest rates including but without



1 limitation to the provisions of Chapter 8 of Title 8, as it  
2 now exists and as it may at any time be amended.

3 "§23-1-178.

4 "(a) The proceeds of all bonds, other than refunding  
5 bonds, issued by the corporation remaining after paying the  
6 expenses of their issuance shall be ~~turned in to~~ deposited in  
7 the State Treasury and credited to the Road and Bridge Fund,  
8 ~~shall be carried in the Public Road and Bridge Account~~ and  
9 shall be subject to be drawn on by the corporation, upon the  
10 approval of the State Department of Transportation ~~and the~~  
11 ~~Governor,~~ but solely for the purpose of constructing,  
12 reconstructing ~~and,~~ or relocating public roads and bridges, or  
13 work incidental or related thereto, including the acquisition  
14 of property necessary therefor, in the State of Alabama;  
15 provided, that such funds may be used only for payment of the  
16 state's share or the costs thereof to be paid by any county or  
17 municipality within the state, of the cost of constructing,  
18 reconstructing ~~and,~~ or relocating public roads and bridges, or  
19 work incidental or related thereto, which have been or will be  
20 constructed, reconstructed, or relocated under programs  
21 financed jointly by the state and the federal government; and  
22 provided further, that if such action shall be necessary in  
23 order to comply with any federal legislation relating to  
24 federal aid in construction of roads, the corporation may  
25 authorize the State Department of Transportation to expend  
26 directly any portion of such proceeds for constructing,  
27 reconstructing ~~and,~~ or relocating such roads and bridges, or

1 work incidental or related thereto. The proceeds from the sale  
2 of any refunding bonds of the corporation remaining after  
3 paying the expenses of their issuance shall be used only for  
4 the purpose of refunding the principal of outstanding bonds of  
5 the corporation and of paying any premium that may be  
6 necessary to be paid in order to redeem or retire the bonds to  
7 be refunded.

8 "(b) Proceeds from the sale of any bonds may be  
9 invested in permitted investments pending their disposition.  
10 Permitted investment as used in this section shall mean: (i)  
11 any bonds or other obligations which as to principal and  
12 interest constitute direct obligations of, or are  
13 unconditionally guaranteed by, the United States of America,  
14 including obligations of any federal agency to the extent such  
15 obligations are unconditionally guaranteed by the United  
16 States of America and any certificates or any other evidences  
17 of an ownership interest in such obligations of, or  
18 unconditionally guaranteed by, the United States of America or  
19 in specified portions thereof, which may consist of the  
20 principal thereof or the interest thereon; (ii) bonds,  
21 debentures, notes, or other evidences of indebtedness issued  
22 by any of the following agencies: Bank for Cooperatives;  
23 Federal Intermediate Credit Banks; Federal Financing Bank;  
24 Federal Home Loan Banks; Federal Farm Credit Bank;  
25 Export-Import Bank of the United States; Federal Land Banks;  
26 or Farmers Home Administration or any other agency or  
27 corporation which has been or may hereafter be created by or

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

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

17           "§23-1-181.

18           "(a) Where used in this section the following words  
19 and terms shall be given the following respective meanings:

20           "(1) BONDS. Such term, without qualifying words or  
21 phrases, means bonds of the corporation issued under this  
22 article.

23           "(2) CODE. The Code of Alabama, 1975.

24           "(3) CORPORATION. Alabama Highway Finance  
25 Corporation, a public corporation and instrumentality of the  
26 State of Alabama that was organized and is existing under this  
27 article.

1           "(4) GASOLINE TAX APPROPRIATION STATUTE. Division 2  
2 of Article 2 of Chapter 17 of Title 40.

3           "(5) HIGHWAY GASOLINE TAX.

4           "a. The excise tax levied in Section 40-17-31, as  
5 amended, exclusive of those portions of ~~said~~ the tax in  
6 respect of aviation fuel and marine gasoline, as those terms  
7 are used in ~~said~~ the section; and

8           "b. The excise tax levied by Article 3 of Chapter 17  
9 of Title 40, exclusive of that portion of the ~~said~~ tax in  
10 respect of diesel fuel.

11           "(6) NET GASOLINE TAX PROCEEDS. The entire proceeds  
12 from the highway gasoline tax less the cost of collection and  
13 less any refunds of the ~~said~~ proceeds pursuant to the  
14 provisions of Article 3 of Chapter 17 of Title 40, or pursuant  
15 to the provisions of either of Divisions 3 and 4 of Article 2  
16 of ~~said~~ Chapter 17.

17           "(7) STATE'S SHARE OF THE NET GASOLINE TAX PROCEEDS.  
18 The 45 percentum of the net gasoline tax proceeds allocated  
19 and appropriated for state highway purposes in Section  
20 40-17-72.

21           "(b) For the purpose of providing funds to enable  
22 the corporation to pay at their respective maturities the  
23 principal of and interest on any bonds that may be issued by  
24 it under the provisions of this article and to accomplish the  
25 purposes and objects of its creation, there hereby is  
26 irrevocably pledged to ~~said~~ the purpose and appropriated so  
27 much as may be necessary for ~~said~~ the purpose of the

1 following, subject, however, to the provisions, hereinafter  
2 set forth in this subsection, as to the rank of the pledges  
3 herein made:

4 "(1) So much as may be necessary for such purpose of  
5 those portions of the motor vehicle license taxes and  
6 registration fees that are provided to be distributed to the  
7 state pursuant to the provisions of Division 1 of Article 5 of  
8 Chapter 12 of Title 40 as amended, remaining after the costs  
9 of collection thereof;

10 "(2) To such extent and to such extent only as the  
11 revenues appropriated under subdivision (1) of this subsection  
12 may not be sufficient to pay at their respective maturities  
13 the principal of and interest on the bonds, so much as may be  
14 necessary for such purpose, when added to the amounts  
15 appropriated in subdivision (1) of this subsection, of the  
16 state's share of the net gasoline tax proceeds;

17 "(3) To such extent and to such extent only as the  
18 revenues appropriated under subdivisions (1) and (2) of this  
19 subsection may not be sufficient to pay at their respective  
20 maturities the principal of and interest on the bonds, so much  
21 as may be necessary for such purpose, when added to the  
22 amounts appropriated in subdivisions (1) and (2) of this  
23 subsection, of the entire proceeds of the following excise  
24 taxes remaining after payment of the costs of collection  
25 thereof:

1            "a. the excise tax levied by Article 1 of Chapter 17  
2 of Title 40 on distributors and storers of motor fuel, as  
3 therein defined; and

4            "b. the excise tax levied by Article 3 of Chapter 17  
5 of Title 40, exclusive of that portion of the ~~said~~ tax in  
6 respect of gasoline.

7            "The term "costs of collection," as used in this  
8 subdivision, shall mean that portion of the excise taxes  
9 referred to in this subdivision that may be appropriated by  
10 the Legislature to the Department of Revenue for its operating  
11 expenses;

12            "(4) To such extent and to such extent only as the  
13 revenues appropriated under subdivisions (1), (2) and (3) of  
14 this subsection may not be sufficient to pay at their  
15 respective maturities the principal of and interest on the  
16 bonds, so much as may be necessary for such purpose, when  
17 added to the amounts appropriated in subdivisions (1), (2) and  
18 (3), of all that portion of the receipts from the inspection  
19 fee on certain petroleum products imposed by Division 1 of  
20 Article 5 of Chapter 17 of Title 8 that is required by the  
21 division to be deposited to the credit of the Public Road and  
22 Bridge Fund; and

23            "(5) To such extent and to such extent only as the  
24 revenues appropriated under subdivisions (1), (2), (3) and (4)  
25 of this subsection may not be sufficient to pay at their  
26 respective maturities the principal of and interest on the  
27 bonds, so much as may be necessary for such purpose, when

1 added to the amounts appropriated in subdivisions (1), (2),  
2 (3) and (4), of the receipts from the fee in respect of  
3 identification markers on motor vehicles that is provided for  
4 in Section 40-17-150.

5 "(c) All moneys hereby appropriated and pledged  
6 shall constitute a sinking fund for the purpose of paying the  
7 principal of and interest on the bonds. All pledges made by  
8 the corporation shall take precedence among themselves in the  
9 order of the adoption of the resolutions making such pledges,  
10 except as may be otherwise provided in such resolutions;  
11 ~~provided, that any such pledges made for the benefit of any~~  
12 ~~refunding bonds that may be issued under the provisions of~~  
13 ~~this article shall be subordinate to any pledge made, either~~  
14 ~~before or after the issuance of such refunding bonds, under~~  
15 ~~the provisions of this article for the benefit of bonds, other~~  
16 ~~than refunding bonds, issued under the provisions of this~~  
17 ~~article.~~

18 "~~(d) The appropriations and pledges herein made, for~~  
19 ~~the benefit of any bonds, including refunding bonds, issued~~  
20 ~~under this article, of the taxes and fees referred to in~~  
21 ~~subdivisions (1) through (5), inclusive, of subsection (b),~~  
22 ~~shall be subject and subordinate to all pledges of the said~~  
23 ~~taxes and fees lawfully made as security for (1) any bonds~~  
24 ~~issued by Alabama Highway Authority prior to December 1, 1977,~~  
25 ~~or (2) any refunding bonds that may be issued by Alabama~~  
26 ~~Highway Authority after December 1, 1977, for the purpose of~~  
27 ~~refunding any of the bonds referred to in clause (1) of this~~



1 ~~sentence if, and only if, the aggregate amount of principal~~  
2 ~~and interest that will mature with respect to such refunding~~  
3 ~~bonds during any fiscal year of the State of Alabama does not~~  
4 ~~exceed the amount of principal and interest, with respect to~~  
5 ~~the bonds refunded by such refunding bonds, that have a stated~~  
6 ~~maturity during the same fiscal year, or that would have had a~~  
7 ~~stated maturity during the same fiscal year if such bonds had~~  
8 ~~not been refunded.~~

9 ~~"(e) Any pledge for the benefit of any refunding~~  
10 ~~bonds issued under this article shall also be subject and~~  
11 ~~subordinate to the following: (1) Any pledge or pledges of the~~  
12 ~~tax proceeds and fees referred to in subdivisions (1) through~~  
13 ~~(5), inclusive, of subsection (b) that may have been made~~  
14 ~~prior to the issuance of such refunding bonds pursuant to~~  
15 ~~authorization in any statute effective at the time of such~~  
16 ~~issuance, and (2) any pledge or pledges authorized, by any~~  
17 ~~statute in effect at the time of the issuance of such~~  
18 ~~refunding bonds, to be made for the benefit of any~~  
19 ~~then-unissued bonds, other than refunding bonds, provided for~~  
20 ~~in any such statute; and provided, further, that the~~  
21 ~~priorities of any such refunding bonds over each other as to~~  
22 ~~any such pledge shall be as may be provided in the resolutions~~  
23 ~~of the board of directors authorizing any such refunding~~  
24 ~~bonds.~~

25 ~~"(f) The appropriations and pledges herein made for~~  
26 ~~the benefit of any bonds, other than refunding bonds, issued~~  
27 ~~under this article shall be prior and superior to any~~

1 ~~appropriations and pledges for the benefit of any obligations~~  
2 ~~that may at any time be issued under the provisions of Article~~  
3 ~~10 of this chapter."~~

4           Section 2. This act shall become effective  
5 immediately following its passage and approval by the  
6 Governor, or its otherwise becoming law.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19

Senate

Read for the first time and referred to the Senate  
committee on Commerce, Transportation, and Utili-  
ties..... 12-FEB-13

Read for the second time and placed on the calen-  
dar..... 14-FEB-13

Read for the third time and passed as amended .... 26-FEB-13

Yeas 24  
Nays 3  
Abstaining 1

Patrick Harris  
Secretary