

1 SB192
2 147770-2
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

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8 SYNOPSIS: The Alabama Highway Finance Corporation
9 issues bonds to assure the state's availability of
10 funds for payment of the state's share of the cost
11 of constructing roads funded by the state or
12 federal governments.

13 This bill would increase the corporation's
14 borrowing authority to not more than \$25 million in
15 aggregate principal amount of bonds outstanding at
16 any time for the purpose of financing the state's
17 share of the cost of constructing roads, bridges,
18 and related improvements funded in part by the
19 federal government or to match federal funds for
20 local roadway, bridge, and related improvements
21 awarded through the Rural Assistance Match Program
22 and administered by the Alabama Department of
23 Transportation.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

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2 To amend Sections 23-1-174, 23-1-177, 23-1-178, and
3 23-1-181 of the Code of Alabama 1975, to add the Governor as a
4 member of the corporation; to designate the officers of the
5 corporation; to increase the borrowing authority of the
6 corporation to not more than \$25 million in aggregate
7 principal amount of bonds of the corporation outstanding at
8 any time for the purpose of financing the state's share of the
9 cost of constructing roads, bridges, and related improvements;
10 and to provide matching funds otherwise to be paid by counties
11 or municipalities for local roadway, bridge, and related
12 improvement projects awarded through the Rural Assistance
13 Match Program and administered by the Alabama Department of
14 Transportation.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 23-1-174, 23-1-177, 23-1-178,
17 and 23-1-181, Code of Alabama 1975, are amended to read as
18 follows:

19 "§23-1-174.

20 "The ~~applicants named in the application and their~~
21 ~~respective successors in office shall constitute the~~ members
22 of the corporation shall consist of the Governor, the Director
23 of Transportation, the Attorney General, and the Director of
24 Finance and their respective successors in office. The
25 ~~Director of Transportation~~ Governor shall be the president of
26 the corporation, the ~~Attorney General~~ Director of Finance
27 shall be its vice-president, the Director of ~~Finance~~

1 Transportation shall be the secretary of the corporation, and
2 the State Treasurer shall be the treasurer of the corporation
3 and shall act as custodian of its funds. The members of the
4 corporation shall constitute all the members of the board of
5 directors of the corporation, and any ~~two~~ three members of the
6 said board of directors shall constitute a quorum for the
7 transaction of business. Should any of ~~said~~ the officials of
8 the state die or should his or her term of office as Director
9 of Transportation, Attorney General, or Director of Finance,
10 as the case may be, expire or should he or she resign
11 therefrom, ~~his~~ the successor in office shall take ~~his~~ the
12 place as a member, officer, and director of the corporation.
13 No member, officer, or director of the corporation shall draw
14 any salary, in addition to that now authorized by law, for any
15 service he or she may render or any duty he or she may perform
16 in connection with the corporation. All proceedings had and
17 done by the board of directors shall be reduced to writing by
18 the secretary of the corporation and recorded in a
19 substantially bound book. Copies of such proceedings, when
20 certified by the secretary of the corporation under the seal
21 of the corporation, shall be received in all courts as prima
22 facie evidence of the matters and things therein certified.

23 "§23-1-177.

24 "(a) The bonds of the corporation shall be signed by
25 its president and attested by its secretary, and the seal of
26 the corporation shall be affixed thereto or printed or
27 otherwise reproduced thereon, ~~and any interest coupons~~

1 ~~applicable to such bonds shall be signed by the president;~~
2 provided, that a facsimile of the signature of one, but not
3 both, of ~~said the~~ officers may be printed or otherwise
4 reproduced on any such bonds in lieu of his or her signing the
5 same ~~and a facsimile of the president's signature may be~~
6 ~~printed or otherwise reproduced on any such interest coupons~~
7 ~~in lieu of his signing the same.~~

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

19 "(c) Bonds of the corporation may be sold from time
20 to time as the board of directors may deem advantageous and
21 without regard to principal amount; provided, that at no time
22 shall the aggregate principal amount of bonds of the
23 corporation, ~~other than~~ including without limitation refunding
24 bonds, ~~which may be issued under this article after February~~
25 ~~1, 1978, shall be limited to \$25,000,000.00; and provided,~~
26 ~~further, that no~~ be outstanding in excess of twenty-five
27 million dollars (\$25,000,000). The principal amount of bonds

1 for which provision for payment has been made with proceeds of
2 refunding bonds or with other funds provided for such purpose,
3 including anticipated investment earnings thereon, shall not
4 be deemed outstanding for purposes hereof. No bonds, other
5 than refunding bonds, may be sold or issued by the corporation
6 unless the Governor shall have first determined that the
7 issuance of the bonds proposed to be issued will be necessary
8 to assure the availability of funds for payment of the state's
9 share of the cost of roads and bridges, or the share of the
10 same to otherwise be paid by counties or municipalities within
11 the state for local roadway or bridge and related improvement
12 projects through a program titled the Rural Assistance Match
13 Program that shall from time to time be constructed with funds
14 supplied jointly by the state and the federal government.

15 ~~"(d) Bonds of the corporation must be sold only at~~
16 ~~public sale, either on sealed bids or at public auction at, to~~
17 ~~the bidder whose bid reflects the lowest net interest cost to~~
18 ~~the corporation for the bonds being sold, computed to their~~
19 ~~relative maturities; provided, that if no bid acceptable to~~
20 ~~the corporation is received it may reject all bids. Notice of~~
21 ~~each such sale shall be given by publication in either a~~
22 ~~financial journal or a financial newspaper published in the~~
23 ~~City of New York, New York and also by publication in a~~
24 ~~newspaper published in the State of Alabama that is~~
25 ~~customarily published not less often than five days during~~
26 ~~each calendar week, each of which notices must be published at~~
27 ~~least one time not less than 10 days prior to the date fixed~~

1 ~~for the sale. The board of directors may fix the terms and~~
2 ~~conditions under which each such sale may be held; provided,~~
3 ~~that none of the bonds may be sold for a price less than the~~
4 ~~face value thereof; and provided, further, that such terms and~~
5 ~~conditions shall not conflict with any of the requirements of~~
6 ~~this article. Bonds of the corporation may be sold at private~~
7 ~~sale or public sale, but if at public sale, only to the bidder~~
8 ~~whose bid reflects the lowest net interest cost to the~~
9 ~~corporation for the bonds being sold, computed to their~~
10 ~~relative maturities, in such manner and at such price or~~
11 ~~prices and at such time or times as may be determined by the~~
12 ~~board of directors to be most advantageous.~~

13 "(e) Subject to the provisions and limitations
14 contained in this article, the corporation may from time to
15 time sell and issue refunding bonds in aggregate principal
16 amounts that may exceed the principal amount of bonds being
17 refunded for the purpose of refunding any matured or unmatured
18 bonds of the corporation ~~then outstanding~~. Approval by the
19 Governor of Alabama of the terms and conditions under which
20 any refunding bonds of the corporation may be issued shall be
21 requisite to their validity. Such approval shall be entered on
22 the minutes of the meetings of the board of directors at which
23 the refunding bonds are authorized and shall be signed by the
24 Governor. ~~Such approval by the Governor may be shown on any~~
25 ~~such bonds by a facsimile of his signature printed or~~
26 ~~otherwise reproduced thereon when authorization thereof is~~
27 ~~contained in the said approval signed by him.~~

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

18 "(g) All contracts made and all bonds issued by the
19 corporation pursuant to the provisions of this article shall
20 be solely and exclusively obligations of the corporation and
21 shall not be an obligation or debt of any kind of the State of
22 Alabama. Bonds issued by the corporation when not registered
23 shall be construed to be negotiable instruments although
24 payable solely from a specified source as provided in this
25 article. All bonds issued by the corporation and the income
26 therefrom shall be exempt from all taxation in the State of
27 Alabama. Any bonds issued by the corporation may be used by

1 the holder thereof as security for any funds belonging to the
2 state or to any instrumentality or agency of the state in any
3 instance where security for such deposits may be required by
4 law.

5 "(h) Unless otherwise directed by the court having
6 jurisdiction thereof or by the document that is the source of
7 authority, a trustee, executor, administrator, guardian, or
8 one acting in any other fiduciary capacity may, in addition to
9 any other investment powers conferred by law and with the
10 exercise of reasonable business prudence, invest trust and
11 other fiduciary funds in bonds of the corporation.

12 "(i) Neither a public hearing nor consent by the
13 state Department of Finance or any other department or agency
14 shall be a prerequisite to the issuance of bonds by the
15 corporation. All obligations issued by the corporation shall
16 be exempt from the laws of the state governing usury or
17 prescribing or limiting interest rates including but without
18 limitation to the provisions of Chapter 8 of Title 8, as it
19 now exists and as it may at any time be amended.

20 "§23-1-178.

21 "(a) The proceeds of all bonds, other than refunding
22 bonds, issued by the corporation remaining after paying the
23 expenses of their issuance shall be ~~turned in to~~ deposited in
24 the State Treasury and credited to the Road and Bridge Fund,
25 ~~shall be carried in the Public Road and Bridge Account~~ and
26 shall be subject to be drawn on by the corporation, upon the
27 approval of the State Department of Transportation ~~and the~~

1 ~~Governor~~, but solely for the purpose of constructing,
2 reconstructing and, or relocating public roads and bridges, or
3 work incidental or related thereto, including the acquisition
4 of property necessary therefor, in the State of Alabama;
5 provided, that such funds may be used only for payment of the
6 state's share or the costs thereof to be paid by any county or
7 municipality within the state, of the cost of constructing,
8 reconstructing and, or relocating public roads and bridges, or
9 work incidental or related thereto, which have been or will be
10 constructed, reconstructed, or relocated under programs
11 financed jointly by the state and the federal government; and
12 provided further, that if such action shall be necessary in
13 order to comply with any federal legislation relating to
14 federal aid in construction of roads, the corporation may
15 authorize the State Department of Transportation to expend
16 directly any portion of such proceeds for constructing,
17 reconstructing and, or relocating such roads and bridges, or
18 work incidental or related thereto. The proceeds from the sale
19 of any refunding bonds of the corporation remaining after
20 paying the expenses of their issuance shall be used only for
21 the purpose of refunding the principal of outstanding bonds of
22 the corporation and of paying any premium that may be
23 necessary to be paid in order to redeem or retire the bonds to
24 be refunded.

25 "(b) Proceeds from the sale of any bonds may be
26 invested in permitted investments pending their disposition.
27 Permitted investment as used in this section shall mean: (i)

1 any bonds or other obligations which as to principal and
2 interest constitute direct obligations of, or are
3 unconditionally guaranteed by, the United States of America,
4 including obligations of any federal agency to the extent such
5 obligations are unconditionally guaranteed by the United
6 States of America and any certificates or any other evidences
7 of an ownership interest in such obligations of, or
8 unconditionally guaranteed by, the United States of America or
9 in specified portions thereof, which may consist of the
10 principal thereof or the interest thereon; (ii) bonds,
11 debentures, notes, or other evidences of indebtedness issued
12 by any of the following agencies: Bank for Cooperatives;
13 Federal Intermediate Credit Banks; Federal Financing Bank;
14 Federal Home Loan Banks; Federal Farm Credit Bank;
15 Export-Import Bank of the United States; Federal Land Banks;
16 or Farmers Home Administration or any other agency or
17 corporation which has been or may hereafter be created by or
18 pursuant to an act of the Congress of the United States as an
19 agency or instrumentality thereof; (iii) bonds, notes, pass
20 through securities, or other evidences of indebtedness of
21 Government National Mortgage Association and participation
22 certificates of Federal Home Loan Mortgage Corporation; (iv)
23 the full faith and credit obligations of any state, provided
24 that at the time of purchase such obligations are rated at
25 least "AA" by Standard & Poor's Ratings Group, "Aa" by Moody's
26 Investors Service, or "AA" by Fitch IBCA, Inc.; (v) public
27 housing bonds issued by public agencies or municipalities and

1 fully secured as to the payment of both principal and interest
2 by contracts with the United States of America, or temporary
3 notes, preliminary notes or project notes issued by public
4 agencies or municipalities, in each case fully secured as to
5 the payment to both principal and interest by a requisition or
6 payment agreement with the United States of America; (vi) time
7 deposits evidenced by certificates of deposit issued by banks
8 or savings and loan associations which are members of the
9 Federal Deposit Insurance Corporation, provided that, to the
10 extent such time deposits are not covered by federal deposit
11 insurance, such time deposits, including interest thereon, are
12 fully secured by a pledge of obligations described in clauses
13 (i), (ii), (iii), and (v) above, which at all times have a
14 market value not less than the amount of such bank time
15 deposits required to be so secured and which meet the greater
16 of 100 percent collateralization or the "AA" collateral levels
17 established by Standard & Poor's Ratings Group for structured
18 financings; (vii) repurchase agreements for obligations of the
19 type specified in clauses (i), (ii), (iii), and (v) above,
20 provided such repurchase agreements are fully collateralized
21 and secured by such obligations which have a market value at
22 least equal to the purchase price of such repurchase
23 agreements which are held by a depository satisfactory to the
24 State Treasurer in such manner as may be required to provide a
25 perfected security interest in such obligations, and which
26 meet the greater of 100 percent collateralization or the "AA"
27 collateral levels established by Standard & Poor's Ratings

1 Group for structured financings; and (viii) uncollateralized
2 investment agreements with, or certificates of deposit issued
3 by, banks or bank holding companies, the senior long-term
4 securities of which are rated at least "AA" by Standard &
5 Poor's Ratings Group and at least "Aa" by Moody's Investors
6 Service.

7 "§23-1-181.

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

10 "(1) BONDS. Such term, without qualifying words or
11 phrases, means bonds of the corporation issued under this
12 article.

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

14 "(3) CORPORATION. Alabama Highway Finance
15 Corporation, a public corporation and instrumentality of the
16 State of Alabama that was organized and is existing under this
17 article.

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

20 "(5) HIGHWAY GASOLINE TAX.

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

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

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

7 "(7) STATE'S SHARE OF THE NET GASOLINE TAX PROCEEDS.
8 The 45 percentum of the net gasoline tax proceeds allocated
9 and appropriated for state highway purposes in Section
10 40-17-72.

11 "(b) For the purpose of providing funds to enable
12 the corporation to pay at their respective maturities the
13 principal of and interest on any bonds that may be issued by
14 it under the provisions of this article and to accomplish the
15 purposes and objects of its creation, there hereby is
16 irrevocably pledged to ~~said~~ the purpose and appropriated so
17 much as may be necessary for ~~said~~ the purpose of the
18 following, subject, however, to the provisions, hereinafter
19 set forth in this subsection, as to the rank of the pledges
20 herein made:

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

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

8 "(3) To such extent and to such extent only as the
9 revenues appropriated under subdivisions (1) and (2) of this
10 subsection may not be sufficient to pay at their respective
11 maturities the principal of and interest on the bonds, so much
12 as may be necessary for such purpose, when added to the
13 amounts appropriated in subdivisions (1) and (2) of this
14 subsection, of the entire proceeds of the following excise
15 taxes remaining after payment of the costs of collection
16 thereof:

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

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

23 "The term "costs of collection," as used in this
24 subdivision, shall mean that portion of the excise taxes
25 referred to in this subdivision that may be appropriated by
26 the Legislature to the Department of Revenue for its operating
27 expenses;

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

12 "(5) To such extent and to such extent only as the
13 revenues appropriated under subdivisions (1), (2), (3) and (4)
14 of 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),
18 (3) and (4), of the receipts from the fee in respect of
19 identification markers on motor vehicles that is provided for
20 in Section 40-17-150.

21 "(c) All moneys hereby appropriated and pledged
22 shall constitute a sinking fund for the purpose of paying the
23 principal of and interest on the bonds. All pledges made by
24 the corporation shall take precedence among themselves in the
25 order of the adoption of the resolutions making such pledges,
26 except as may be otherwise provided in such resolutions;
27 ~~provided, that any such pledges made for the benefit of any~~

1 ~~refunding bonds that may be issued under the provisions of~~
2 ~~this article shall be subordinate to any pledge made, either~~
3 ~~before or after the issuance of such refunding bonds, under~~
4 ~~the provisions of this article for the benefit of bonds, other~~
5 ~~than refunding bonds, issued under the provisions of this~~
6 ~~article.~~

7 ~~"(d) The appropriations and pledges herein made, for~~
8 ~~the benefit of any bonds, including refunding bonds, issued~~
9 ~~under this article, of the taxes and fees referred to in~~
10 ~~subdivisions (1) through (5), inclusive, of subsection (b),~~
11 ~~shall be subject and subordinate to all pledges of the said~~
12 ~~taxes and fees lawfully made as security for (1) any bonds~~
13 ~~issued by Alabama Highway Authority prior to December 1, 1977,~~
14 ~~or (2) any refunding bonds that may be issued by Alabama~~
15 ~~Highway Authority after December 1, 1977, for the purpose of~~
16 ~~refunding any of the bonds referred to in clause (1) of this~~
17 ~~sentence if, and only if, the aggregate amount of principal~~
18 ~~and interest that will mature with respect to such refunding~~
19 ~~bonds during any fiscal year of the State of Alabama does not~~
20 ~~exceed the amount of principal and interest, with respect to~~
21 ~~the bonds refunded by such refunding bonds, that have a stated~~
22 ~~maturity during the same fiscal year, or that would have had a~~
23 ~~stated maturity during the same fiscal year if such bonds had~~
24 ~~not been refunded.~~

25 ~~"(e) Any pledge for the benefit of any refunding~~
26 ~~bonds issued under this article shall also be subject and~~
27 ~~subordinate to the following: (1) Any pledge or pledges of the~~

1 ~~tax proceeds and fees referred to in subdivisions (1) through~~
2 ~~(5), inclusive, of subsection (b) that may have been made~~
3 ~~prior to the issuance of such refunding bonds pursuant to~~
4 ~~authorization in any statute effective at the time of such~~
5 ~~issuance, and (2) any pledge or pledges authorized, by any~~
6 ~~statute in effect at the time of the issuance of such~~
7 ~~refunding bonds, to be made for the benefit of any~~
8 ~~then-unissued bonds, other than refunding bonds, provided for~~
9 ~~in any such statute; and provided, further, that the~~
10 ~~priorities of any such refunding bonds over each other as to~~
11 ~~any such pledge shall be as may be provided in the resolutions~~
12 ~~of the board of directors authorizing any such refunding~~
13 ~~bonds.~~

14 ~~"(f) The appropriations and pledges herein made for~~
15 ~~the benefit of any bonds, other than refunding bonds, issued~~
16 ~~under this article shall be prior and superior to any~~
17 ~~appropriations and pledges for the benefit of any obligations~~
18 ~~that may at any time be issued under the provisions of Article~~
19 ~~10 of this chapter."~~

20 Section 2. This act shall become effective
21 immediately following its passage and approval by the
22 Governor, or its otherwise becoming law.