

1 SB559
2 120355-2
3 By Senator Sanders
4 RFD: Finance and Taxation Education
5 First Read: 23-MAR-10

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8 SYNOPSIS: This bill requires the Alabama Public
9 School and College Authority to sell and issue
10 \$66,500,000 in aggregate principal amount of
11 additional bonds for the support of public
12 education. This bill authorizes the Authority to
13 reimburse the Department of Finance and the State
14 Treasurer's office for costs incurred in providing
15 services for the Authority; it authorizes the
16 Authority to provide for the details of the bonds
17 and the sale and issuance thereof; it makes an
18 appropriation and pledge for payment of the
19 principal and interest on the bonds from specific
20 funds necessary to pay the principal and interest
21 at their respective maturities and authorizes the
22 Authority to pledge for payment of the principal
23 and interest on the bonds the funds that are
24 appropriated and pledged; it provides for the
25 investment of funds by the State Treasurer; it
26 provides that the bonds shall not constitute a debt
27 of the state but shall be limited obligations

1 payable out of the funds appropriated and pledged
2 therefor; it provides that the bonds and income
3 therefrom shall be exempt from all taxation in this
4 state and that the bonds may be used to secure
5 deposits of funds of this state and its political
6 subdivisions, instrumentalities and agencies and
7 for investment of fiduciary funds; it authorizes
8 the Authority to establish procedures and
9 requirements to ensure compliance with the tax
10 covenants with which the Authority must comply; it
11 exempts the bonds from the usury laws of the state;
12 it authorizes the Authority to issue refunding
13 bonds and gives the details of such refunding; it
14 provides for the employment of attorneys, fiscal
15 advisors, trustees, paying agents, investment
16 bankers, banks, and underwriters and for the
17 payment of all expenses incurred in the issuance of
18 the bonds; it provides that after payment of the
19 expenses of the issuance of the bonds the proceeds
20 from the sale thereof shall be disbursed on order
21 or warrants issued by or under the direction of the
22 Authority for the purposes for which the bonds are
23 authorized to be issued; it provides that the bonds
24 may not be issued if certain conditions are met;
25 and it provides that if any portion of this act
26 should be held invalid such holding shall not
27 affect the validity of any other portion thereof.

1
2 A BILL
3 TO BE ENTITLED
4 AN ACT
5

6 To authorize the Alabama Public School and College
7 Authority to sell and issue \$66,500,000 in aggregate principal
8 amount of additional bonds for the support of public
9 education; to authorize the Authority to reimburse the
10 Department of Finance and the State Treasurer's office for
11 costs incurred in providing services for the Authority; to
12 authorize the Authority to provide for the details of the
13 bonds and the sale and issuance thereof; to make an
14 appropriation and pledge for payment of the principal and
15 interest on the bonds from specific funds necessary to pay the
16 principal and interest at their respective maturities and
17 authorizes the Authority to pledge for payment of the
18 principal and interest on the bonds the funds that are
19 appropriated and pledged; to provide for the investment of
20 funds by the State Treasurer; to provide that the bonds shall
21 not constitute a debt of the state but shall be limited
22 obligations payable out of the funds appropriated and pledged
23 therefor; to provide that the bonds and income therefrom shall
24 be exempt from all taxation in this state and that the bonds
25 may be used to secure deposits of funds of this state and its
26 political subdivisions, instrumentalities and agencies and for
27 investment of fiduciary funds; to authorize the Authority to

1 establish procedures and requirements to ensure compliance
2 with the tax covenants with which the Authority must comply;
3 to exempt the bonds from the usury laws of the state; to
4 authorize the Authority to issue refunding bonds and give the
5 details of such refunding; to provide for the employment of
6 attorneys, fiscal advisors, trustees, paying agents,
7 investment bankers, banks, and underwriters and for the
8 payment of all expenses incurred in the issuance of the bonds;
9 to provide that after payment of the expenses of the issuance
10 of the bonds the proceeds from the sale thereof shall be
11 disbursed on order or warrants issued by or under the
12 direction of the Authority for the purposes for which the
13 bonds are authorized to be issued; it provides that the bonds
14 may not be issued if certain conditions are met; and to
15 provide that if any portion of this act should be held invalid
16 such holding shall not affect the validity of any other
17 portion thereof.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Definitions. Wherever used in this act,
20 the following terms shall have the following meanings
21 respectively, unless the context clearly indicates otherwise:

22 (1) "Authority" means the Alabama Public School and
23 College Authority.

24 (2) "Bonds" means those bonds, other than Refunding
25 Bonds, issued under the provisions of this act.

26 (3) "Government Securities" means any bonds or other
27 obligations which as to principal and interest constitute

1 direct obligations of, or are unconditionally guaranteed by,
2 the United States of America, including obligations of any
3 federal agency to the extent such obligations are
4 unconditionally guaranteed by the United States of America and
5 any certificates or any other evidences of an ownership
6 interest in such obligations of, or unconditionally guaranteed
7 by, the United States of America or in specified portions
8 thereof (which may consist of the principal thereof or the
9 interest thereon).

10 (4) "Legislature" means the Legislature of Alabama.

11 (5) "Permitted Investments" means (i) Government
12 Securities; (ii) bonds, debentures, notes or other evidences
13 of indebtedness issued by any of the following agencies: Bank
14 for Cooperatives; Federal Intermediate Credit Banks; Federal
15 Financing Bank; Federal Home Loan Banks; Federal Farm Credit
16 Bank; Export-Import Bank of the United States; Federal Land
17 Banks; or Farmers Home Administration or any other agency or
18 corporation which has been or may hereafter be created by or
19 pursuant to an act of the Congress of the United States as an
20 agency or instrumentality thereof; (iii) bonds, notes, pass
21 through securities or other evidences of indebtedness of
22 Government National Mortgage Association and participation
23 certificates of Federal Home Loan Mortgage Corporation; (iv)
24 full faith and credit obligations of any state, provided that
25 at the time of purchase such obligations are rated at least
26 "AA" by Standard & Poor's Ratings Group and at least "Aa" by
27 Moody's Investors Service; (v) public housing bonds issued by

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

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

8 (6) "Refunding Bonds" means those refunding bonds
9 issued under the provisions of this act.

10 (7) "State" means the State of Alabama.

11 Section 2. (a) On or before December 1, 2010, the
12 Authority shall sell and issue its Bonds in the aggregate
13 principal amount of \$66,500,000 and shall apply the proceeds
14 as provided in this act.

15 (b) The Bonds authorized by this act to be issued by
16 the Authority shall be in addition to all other bonds
17 previously authorized to be issued by it, and the powers
18 conferred on the Authority by this act are in addition to all
19 other powers heretofore conferred on the Authority by acts
20 heretofore enacted by the Legislature.

21 Section 3. The Bonds shall be signed by the
22 president or vice-president of the Authority, and the seal of
23 the Authority affixed thereto (or a facsimile thereof
24 imprinted thereon) and attested by its secretary. All
25 signatures of the president, vice-president, and secretary may
26 be facsimile signatures if the Authority, in its proceedings
27 with respect to issuance, provides for manual authentication

1 (which may be in the form of a certificate as to registration)
2 of the Bonds by a trustee, registrar or paying agent or by
3 named individuals who are employees of the State and who are
4 assigned to the Finance Department or State Treasurer's Office
5 of the State. All Bonds bearing signatures or facsimiles of
6 the signatures of officers of the Authority in office on the
7 date of signing thereof shall be valid and binding
8 notwithstanding that before the delivery thereof and payment
9 therefor, any officer whose signature appears thereon shall
10 have ceased to be an officer of the Authority. The Bonds and
11 the income therefrom shall be exempt from all taxation in the
12 State of Alabama, may be used as security for deposits, and
13 shall be eligible for investments of fiduciary funds, as
14 provided in the 1965 Act. The Bonds shall be construed to have
15 all the qualities and incidents of negotiable instruments
16 subject to any registration provisions pertaining to
17 transfers. The Authority and the Bonds shall be exempt from
18 all laws of the State governing usury including, without
19 limitation, the provisions of Title 8, Chapter 8, Code of
20 Alabama 1975, or any subsequent statute of similar import. The
21 Bonds shall be in such form or forms and denomination or
22 denominations and of such tenor and maturities, shall bear
23 such rate or rates of interest payable and evidenced in such
24 manner, may be made subject to redemption prior to their
25 maturities, and may contain provisions not inconsistent with
26 this act, all as may be provided by the resolution of the
27 Authority under which the Bonds may be issued; provided, that

1 no Bonds shall have a specified maturity date later than
2 twenty years after their date; and provided further, that
3 those Bonds having maturities more than ten years after their
4 date shall be subject to redemption at the option of the
5 Authority on any date on and after the tenth anniversary after
6 their date at such redemption price or prices and under such
7 conditions as may be prescribed in the proceedings of the
8 Authority under which they are issued. For the purpose of
9 paying the principal of, premium, if any, and interest on the
10 Bonds or any Refunding Bonds, the Authority shall designate
11 the State Treasurer or such bank or banks as the Authority, in
12 its discretion, determines to be appropriate and desirable.
13 Funds for the payment of debt service shall be transferred by
14 the Authority or the State Treasurer on behalf of the
15 Authority to the designated paying agent on the actual due
16 date of such principal, premium, if any, or interest.

17 Section 4. The Bonds may be sold by the Authority
18 from time to time in series, and if sold in more than one
19 series, may all be authorized in one initial resolution of the
20 Authority with the pledges therefor made by the Authority in
21 such initial resolution although some of the details
22 applicable to each series may be specified in the respective
23 resolutions under which the different series are issued. Each
24 series of the Bonds shall be sold competitively only at public
25 sale, on sealed bids which may be submitted either
26 electronically or in writing, after such advertisement as
27 shall be prescribed by the Authority and at such time or times

1 as the Authority may consider advantageous, to the bidder
2 whose bid reflects the lowest true interest cost to the
3 Authority computed to the respective maturities of the Bonds
4 being sold (considering mandatory redemption as scheduled
5 maturity); provided, that if no bid deemed acceptable by the
6 Authority is received it may reject all bids. The Authority
7 may fix the method and the terms and conditions under which
8 the sale of any series of the Bonds may otherwise be held;
9 provided that such terms and conditions shall not conflict
10 with any requirement of this act. Approval by the Governor of
11 Alabama of the terms and conditions under which any of the
12 Bonds may be issued shall be requisite to their validity.
13 Neither a public hearing nor consent of the State Department
14 of Finance or any other department or agency shall be a
15 prerequisite to the issuance of any of the Bonds.

16 Section 5. (a) Notwithstanding Section 16-13-234 of
17 the Code of Alabama, 1975, for the purpose of providing for
18 payment of the principal, premium (if any), and interest on
19 the Bonds, and to accomplish the objectives of this act, there
20 is hereby irrevocably pledged to those purposes, and hereby
21 appropriated, such amount as may be necessary therefor from
22 the revenues of the Public School Fund, as created by Section
23 260 of the Constitution of Alabama of 1901.

24 (b) All monies hereby appropriated and pledged shall
25 constitute a sinking fund for the purpose of paying the
26 principal of, premium, if any, and interest on the Bonds. The
27 State Treasurer is authorized and directed to pay at their

1 respective maturities the principal of, premium, if any, and
2 interest on the Bonds out of this fund and out of the residues
3 of the tax receipts herein appropriated and pledged for the
4 benefit of the Bonds, and is further authorized and directed
5 to set up and maintain appropriate records pertaining thereto.

6 Section 6. The Bonds shall not be general
7 obligations of the Authority but shall be limited obligations
8 payable solely out of the residues of the revenues
9 appropriated and pledged in Section 5 of this act. All Bonds
10 issued by the Authority pursuant to the provisions of this act
11 shall be solely and exclusively obligations of the Authority
12 and shall not constitute or create an obligation or debt of
13 the State. As security for the payment of the principal of,
14 premium, if any, and interest on the Bonds, the Authority is
15 hereby authorized and empowered to pledge the revenues that
16 are appropriated and pledged in Section 5 hereof for such
17 purposes. All such pledges made by the Authority shall take
18 precedence in the order of the adoption of the resolutions
19 containing the pledges.

20 Section 7. For the purpose of refunding Bonds of the
21 Authority issued under the provisions of this act, whether
22 such refunding shall occur before, at or after the maturity of
23 the Bonds refunded and for the purpose of paying all premiums
24 and expenses of such refunding (including, but not limited to,
25 attorneys' fees, costs of printing the Refunding Bonds, fiscal
26 agents' fees, and accountants' fees), the Authority is hereby
27 authorized to sell and issue its Refunding Bonds. Such

1 Refunding Bonds may be sold and issued from time to time, at
2 public sale, on sealed bids and on such other terms and
3 conditions as the Authority shall determine to be advantageous
4 and shall adopt and provide for in its proceedings for the
5 sale and issuance of such Refunding Bonds. Provided, however,
6 no Refunding Bonds shall be issued unless the present value of
7 all debt service on the Refunding Bonds (computed with a
8 discount rate equal to the true interest rate of the Refunding
9 Bonds and taking into account all underwriting discount and
10 other issuance expenses) shall not be greater than 95 percent
11 of the present value of all debt service on the Bonds to be
12 refunded (computed using the same discount rate and taking
13 into account the underwriting discount and other issuance
14 expenses originally applicable to such Bonds) determined as if
15 such Bonds to be refunded were paid and retired in accordance
16 with the schedule of maturities (considering mandatory
17 redemption as scheduled maturity) provided at the time of
18 their issuance. Provided further that the average maturity of
19 the Refunding Bonds, as measured from the date of issuance of
20 such Refunding Bonds, shall not exceed by more than three
21 years the average maturity of the Bonds to be refunded, as
22 also measured from such date of issuance, with the average
23 maturity of any principal amount of Bonds to be determined by
24 multiplying the principal of each maturity by the number of
25 years (including any fractional part of a year) intervening
26 between such date of issuance and each such maturity, taking
27 the sum of all such products, and then dividing such sum by

1 the aggregate principal amount of Bonds for which the average
2 maturity is to be determined. For the purpose of providing
3 funds to enable the Authority to pay at their respective
4 maturities the principal of, premium, if any, and interest on
5 the Refunding Bonds issued under this act, the Authority is
6 hereby authorized to pledge irrevocably for such purpose, and
7 there is hereby appropriated for such purpose, such amount as
8 may be necessary of the residues of the receipts from the
9 revenues pledged and appropriated in Section 5 of this act,
10 any reserves or sinking funds established by the Authority, as
11 well as revenues of the Authority from any other sources
12 specified in the proceedings wherein the Refunding Bonds are
13 authorized to be issued. Pending the application of the
14 proceeds of Refunding Bonds issued in accordance with this
15 Section, the proceeds, together with investment earnings
16 therefrom, and amounts in any sinking fund, together with
17 investment earnings thereon, may be held by the State
18 Treasurer as treasurer of the Authority in trust, or may be
19 deposited by the State Treasurer in trust, on such terms as
20 the State Treasurer and the Authority shall approve, with a
21 trustee or escrow agent, which trustee or escrow agent shall
22 be a banking institution or trust company authorized to
23 exercise trust powers in Alabama, for investment in Permitted
24 Investments. Proceeds of Refunding Bonds shall be so invested
25 and applied as to assure that the principal, interest, and
26 redemption premium, if any, on the Bonds being refunded shall
27 be paid in full on the respective maturity, redemption, or

1 interest payment dates. Refunding Bonds issued by the
2 Authority shall not be general obligations of the Authority
3 but shall be payable solely from the sources specified in this
4 act and in the proceedings whereby the Refunding Bonds are
5 authorized to be issued. All Refunding Bonds issued by the
6 Authority shall be solely and exclusively obligations of the
7 Authority and shall not create debts of the State of Alabama.
8 The faith and credit of the State of Alabama shall never be
9 pledged for the payment of any Refunding Bonds issued by the
10 Authority under this act. The Authority may contract with
11 respect to the safekeeping and application of the proceeds of
12 Refunding Bonds and other funds included therewith and the
13 income therefrom, and shall have the right and power to
14 appoint a trustee therefore, which may be any bank or company
15 authorized to exercise trust powers and located within and/or
16 without the State. All other provisions of this act shall
17 apply to the Refunding Bonds issued hereunder except the
18 limitation contained in Section 2 of this act on the amount of
19 Bonds that may be issued under this act. All pledges made by
20 this act, or by the Authority pursuant to the provisions of
21 this act, for the benefit of Refunding Bonds issued under this
22 act shall take precedence in the order of the adoption of the
23 resolutions authorizing the issuance of such Refunding Bonds.
24 Bonds refunded prior to their maturity with the proceeds of
25 Refunding Bonds shall be deemed paid and the pledges herein
26 and by the Authority made for the payment thereof defeased if
27 the Authority, in its proceedings regarding issuance of the

1 Refunding Bonds shall provide for and establish a trust or
2 escrow fund comprised of monies or Government Securities, or
3 both, sufficient to pay, when due, the entire principal of,
4 premium, if any, and interest on the Bonds to be refunded
5 thereby; provided, that such Government Securities shall not
6 be subject to redemption prior to their maturities other than
7 at the option of the holder thereof. Upon the establishment of
8 such a trust or escrow fund, the refunded Bonds shall no
9 longer be deemed to be outstanding, shall no longer be secured
10 by the funds pledged therefor in Section 5 of this act, shall
11 no longer be obligations of the Authority and shall be secured
12 solely by and payable from monies and Government Securities
13 deposited in such trust or escrow fund.

14 Section 8. (a) The proceeds derived from each sale
15 of the Bonds issued pursuant to this act shall be deposited in
16 the State Treasury and shall be carried in a separate fund
17 therein for the account of the Authority, which shall pay the
18 expenses of issuance therefrom. The expenses of issuance of
19 the Bonds shall be prorated among the recipients of the
20 proceeds from the sale of the Bonds in proportions they
21 receive allocations of the proceeds thereunder. The proceeds
22 from the sale of the Bonds remaining after payment of the
23 expenses of issuance thereof shall be retained in said fund
24 and, until they are paid out, shall be invested by the State
25 Treasurer at the direction of the Authority in Permitted
26 Investments maturing at such time or times as the Authority
27 shall direct.

1 (b) Proceeds from the sale of the Bonds and the
2 earnings thereon shall be paid out from time to time on orders
3 or warrants issued by or at the direction of the Authority for
4 the purposes specified in this act, to include the following
5 allocations:

6 (1) Thirty two million three hundred two thousand
7 six hundred eighty seven dollars (\$32,302,687) shall be
8 allocated and expended to repay the Education Trust Fund for
9 appropriations made in Act 2009-339 to the local boards of
10 education for the purpose of school bus fleet renewal. Such
11 repayment shall occur on or after October 1, 2010, or the date
12 the bonds are issued, whichever is later.

13 (2) Thirty three million forty thousand one hundred
14 seventy dollars (\$33,040,170) shall be allocated and expended
15 for local boards of education for the purpose of school bus
16 fleet renewal. The allocation in this subdivision shall be
17 distributed by the State Department of Education to the
18 various local boards of education in the same manner that
19 fleet renewal funds are distributed for purposes of the
20 Foundation Program. Local boards of education may use the
21 distribution provided by this subdivision to retire existing
22 indebtedness that was incurred to pay for capital
23 improvements.

24 Section 9. Notwithstanding any of the foregoing and
25 in addition to all powers heretofore granted to the Authority,
26 the Authority is hereby expressly authorized to use the
27 proceeds derived from the sale of Bonds and income on

1 Permitted Investments in accordance with the provisions of
2 this act. Additionally, the Authority is hereby expressly
3 permitted to pay to the Department of Finance and the State
4 Treasurer's Office, from time to time and from any funds
5 available to the Authority, amounts to offset costs incurred
6 in the administration of the business of the Authority. The
7 cost of such compensation shall be prorated among the
8 recipients of proceeds of the Bonds in the same manner as the
9 expenses of issuance of the Bonds are required hereby to be
10 prorated.

11 Section 10. The Authority shall hire or contract
12 with businesses or individuals which reflect the racial and
13 ethnic diversity of the State.

14 Section 11. Tax Exemption. The Authority shall have
15 the power to make such payments to the United States of
16 America as the board of directors of the Authority deems
17 necessary to cause the interest on any bonds of the Authority,
18 including the Bonds, to be and remain exempt from, or
19 excludible from gross income for purposes of, federal income
20 taxation. The Authority shall have the power to make such
21 agreements respecting the investment of funds of the Authority
22 as the Authority shall deem necessary in order that the
23 interest income on bonds of the Authority be and remain exempt
24 from, or excludible from gross income for purposes of, federal
25 income taxation.

26 Section 12. Issuance Expenses; Contracts and
27 Appointments. The Authority is authorized to pay out of

1 proceeds of any series of Bonds the costs and expenses
2 incurred in connection with the issuance of such Bonds,
3 including without limitation legal and accounting fees and
4 expenses, fees and expenses of any financial or fiscal advisor
5 employed by the Authority, printing costs, rating agency fees,
6 and premiums or charges for any credit enhancement or
7 liquidity providers. Notwithstanding any provision of this act
8 or the 1965 Act, in appointing, employing, or contracting with
9 attorneys, fiscal advisers, trustees, paying agents,
10 investment bankers, banks and underwriters, the Authority may
11 appoint, employ or contract with firms whose principal offices
12 are located without or within Alabama. The Authority shall
13 hire or contract with attorneys, fiscal advisors, trustees,
14 paying agents, investment bankers, banks, and underwriters
15 which shall reflect the racial and ethnic diversity of the
16 state. The Authority shall issue Requests For Proposals for
17 attorneys, fiscal advisors, trustees, paying agents,
18 investment bankers, banks, and underwriters. The Authority
19 shall evaluate each proposed bid publicly and award each
20 contract publicly. Minutes of the Authority's meeting shall
21 record the reasons for awarding each contract.

22 Section 13. Withdrawal of Authority to Issue Bonds.

23 The Alabama Public School and College Authority shall not
24 issue any of the bonds provided for in this act if, prior to
25 the issuance of such bonds, the state receives an amount
26 greater than or equal to \$66,500,000 in federal funds from a
27 federal jobs bill, or other similar federal act, enacted after

1 March 1, 2010, and such funds may be used by local boards of
2 education for the purpose of school bus fleet renewal.

3 Section 14. Severability. In the event any section,
4 sentence, clause or provision of this act shall be declared
5 invalid by a court of competent jurisdiction, such action
6 shall not affect the validity of the remaining sections,
7 sentences, clauses, or provisions of this act, which shall
8 continue effective.

9 Section 15. Effective Date. This act shall become
10 effective immediately upon its passage and approval by the
11 Governor or upon its otherwise becoming a law.