

1 SB364  
2 191640-1  
3 By Senator Orr  
4 RFD: Finance and Taxation Education  
5 First Read: 06-MAR-18

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8 SYNOPSIS: Existing law requires a county to complete a  
9 county government bond financing review form that  
10 is prepared by the Department of Examiners of  
11 Public Accounts when executing a bond financing  
12 agreement that acknowledges that the county has  
13 considered the relevant factors important to the  
14 decision of entering into bonded indebtedness. The  
15 form must be submitted to the Department of  
16 Examiners of Public Accounts and made available for  
17 public inspection.

18 This bill would require the bond financing  
19 agreement documents to include a schedule of all of  
20 the debt obligations of the county for the time  
21 span of the maturity of the debt obligation at  
22 issue and would require the chair of the county  
23 commission and the authorized signatory for the  
24 bond underwriter to sign an acknowledgment that the  
25 total amount of debt obligations and a schedule of  
26 the total debt payments has been presented and

1 explained to all members of the county commission  
2 prior to the sale of bonds.

3 This bill would add to the county government  
4 bond financing review form a statement  
5 acknowledging that the county commission has  
6 received from the bond underwriter a potential debt  
7 service schedule for all county debt for the time  
8 span of the maturity of the debt obligation at  
9 issue and has been advised of the ability of the  
10 county to pay all of the debt obligations.

11 This bill would require a municipality or a  
12 local school board to follow the same procedures  
13 required of a county before entering into a bond  
14 financing agreement and would require the  
15 municipality or local school board to complete a  
16 government bond financing review form developed by  
17 the Department of Examiners of Public Accounts when  
18 executing a bond financing agreement acknowledging  
19 that the municipality or local school board has  
20 considered the relevant factors important to the  
21 decision of entering into bonded indebtedness. This  
22 bill would also require that the form be submitted  
23 to the Department of Examiners of Public Accounts  
24 and made available for public inspection.

25  
26 A BILL  
27 TO BE ENTITLED

1 AN ACT

2  
3 To amend Sections 11-8A-3 and 11-8A-4, Code of  
4 Alabama 1975, relating to the county government bond financing  
5 review form; to require the bond financing agreement documents  
6 to include a schedule of all of the debt obligations of the  
7 county under certain conditions; to require the chair of the  
8 county commission and the authorized signatory for the bond  
9 underwriter to sign an acknowledgement that the total amount  
10 of debt obligations and a schedule of the total debt payments  
11 has been presented and explained to the county commission; to  
12 add a statement to the county government bond financing review  
13 form acknowledging that the county commission has received the  
14 debt service schedule under certain conditions; to require  
15 that a municipality or local school board would follow the  
16 same procedures required of a county before entering into a  
17 bond financing agreement and would complete a government bond  
18 financing review form developed by the Department of Examiners  
19 of Public Accounts; and to require that the form be submitted  
20 to the Department of Examiners of Public Accounts and made  
21 available for public inspection.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Sections 11-8A-3 and 11-8A-4, Code of  
24 Alabama 1975, are amended to read as follows:

25 "§11-8A-3.

26 "(a) In addition to any and all other documents  
27 presented for examination and execution of a bond financing

1 agreement which, for the purposes of this chapter, takes place  
2 at the time a county commission makes an official award of the  
3 bonds, the county commission shall execute a county government  
4 bond financing review form. The standard review form shall be  
5 prepared by the Department of Examiners of Public Accounts and  
6 shall include statements to the effect that:

7 "(1) The county commission has considered whether it  
8 can satisfy its financial obligations for the life of the  
9 bonds.

10 "(2) In the case of limited obligation indebtedness,  
11 the county commission has identified the source for the debt  
12 service payments for the life of the bonds, and in the case of  
13 general obligation indebtedness, the county commission has  
14 indicated that the full faith and credit of the county has  
15 been pledged for the debt service payments for the life of the  
16 bonds.

17 "(3) The county commission has considered the period  
18 of usefulness of the improvement or property for which the  
19 bonds are to be issued in light of the duration of the term of  
20 the bonds under the bond financing agreement.

21 "(4) The county commission acknowledges that bond  
22 proceeds shall not be used for general operating expenses of  
23 the county.

24 "(5) The county commission has received from the  
25 bond underwriter, bond counsel, issuer's counsel, trustee, and  
26 any others associated with the issuance of bonds an itemized  
27 listing of their respective fees and all other costs which

1 shall not be subject to change prior to the sale or issuance  
2 of bonds.

3 "(6) The county commission has received from the  
4 bond underwriter a clear and understandable written proposal  
5 explaining all details of the proposed bond issue, its  
6 repayment schedule, and any external factors which could  
7 affect the total cost to the county if it issues the bonds.

8 "(7) The county commission has considered the  
9 effect, if any, that the bonds will have on the county's  
10 constitutional debt limit.

11 "(8) The county commission has received from the  
12 bond underwriter information demonstrating that the estimated  
13 interest rate on the bonds is reasonable and, that if  
14 information regarding similar recent issuances is available,  
15 the interest rates are comparable with other similar issuances  
16 based on current bond market conditions on the date of  
17 execution of the bond financing agreement.

18 "(9) The county commission has received from the  
19 bond underwriter a separate document of the potential debt  
20 service schedule for all county debt for the time span of the  
21 maturity of the debt obligation at issue and has been advised  
22 of the ability of the county to pay all of the debt  
23 obligations.

24 "(b) If the proceeds of the proposed bonds are to be  
25 used in whole or in part for the purpose of refinancing or  
26 refunding outstanding bonds, the county government bond

1 financing review form shall also include statements to the  
2 effect that:

3 "(1) The county commission understands how the  
4 issuance of refunding bonds may extend the county's initial  
5 debt repayment period and the total cost paid by the county by  
6 the end of the refunding period.

7 "(2) The county commission has considered whether  
8 the refunding bonds will create net present value savings for  
9 the county, including the costs of refinancing.

10 "(c) In connection with a swap agreement, the county  
11 government bond financing review form shall include statements  
12 to the effect that:

13 "(1) The county commission has complied with  
14 paragraph a. of subdivision (2) of Section 41-1-42.

15 "(2) The county commission has reviewed or had  
16 explained by the adviser selected as provided in Section  
17 11-8A-5 all documentation provided pertaining to the swap  
18 agreement as required in subsection (d).

19 "(3) The county commission has designated an  
20 employee or official who will have primary responsibility for  
21 the consideration, execution, and monitoring of interest rate  
22 swaps and financial hedges entered into by the county.

23 "(4) The county commission has determined whether  
24 the county's obligations under the swap agreement constitute a  
25 general obligation indebtedness of the county and whether the  
26 source of payment is sufficient.

1           "(5) The county commission has sought and received  
2 specific information disclosing the potential risks inherent  
3 in the swap agreement including those risks commonly referred  
4 to in the derivatives industry as basis risk, tax risk,  
5 interest rate risk, counterparty risk, termination risk,  
6 market-access risk, rollover or anticipation risk, and credit  
7 risk.

8           "(d) The county government bond financing review  
9 form shall also include a statement acknowledging that all  
10 enumerated items on the review form have been considered by  
11 the county commission, and that the county commission has  
12 voted to enter into the bond financing agreement or swap  
13 agreement by an affirmative vote of a majority of the members  
14 of the county commission. The statement of acknowledgment  
15 shall be signed by the chair of the county commission or  
16 another commission member designated by the county commission  
17 and the adviser or consultant utilized by the county  
18 commission pursuant to Section 11-8A-5.

19           "(e) A copy of the county government bond financing  
20 review form shall be forwarded to the Department of Examiners  
21 of Public Accounts within 10 business days of the issuance of  
22 the bonds or swap agreement. All county government bond  
23 financing review forms shall be kept on file at the department  
24 and shall be available for public inspection for a period of  
25 seven years.

26           "§11-8A-4.



1           "(a) In addition to the requirements of Section  
2 11-8A-3, the bond financing agreement documents shall include  
3 a detailed itemization of the costs and fees which will be  
4 paid directly by the county commission or from bond proceeds  
5 under the bond financing agreement. This itemization shall  
6 include a statement acknowledging that the amounts of these  
7 costs and fees have been presented and explained to all  
8 members of the county commission prior to the sale of bonds.  
9 The acknowledgement statement shall be signed by the chair of  
10 the county commission or another commission member designated  
11 by the county commission and by the authorized signatory for  
12 the bond underwriter.

13           "(b) In addition to the requirements of Section  
14 11-8A-3, the bond financing agreement documents shall include  
15 a schedule of all of the debt obligations of the county for  
16 the time span of the maturity of the debt obligation at issue.  
17 This schedule shall include a statement acknowledging that the  
18 total amount of all debt obligations and a schedule of the  
19 total debt payments have been presented and explained to all  
20 members of the county commission prior to the sale of bonds.  
21 The acknowledgement statement shall be signed by the chair of  
22 the county commission or another commission member designated  
23 by the county commission and by the authorized signatory for  
24 the bond underwriter.

25           "~~(b)~~ (c) In connection with a swap agreement, the  
26 documentation necessary to effectuate the swap agreement shall  
27 also include a statement from the authorized signatory for the

1 bond underwriter or authorized signatory of the provider of  
2 the swap agreement to the effect that:

3 "(1) It has provided the county commission with a  
4 disclosure of the potential risks inherent in the swap  
5 agreement.

6 "(2) It has disclosed all fees associated with the  
7 swap agreement.

8 "(3) It has provided the county commission with  
9 documentation necessary to effectuate the swap agreement  
10 including master agreements, schedules, credit support  
11 annexes, confirmations, legal opinions, fairness opinions, and  
12 any other information necessary to comply with subdivisions  
13 (3) and (5) of subsection (c) of Section 11-8A-3."

14 Section 2. As used in Sections 2 through 6, the  
15 following words shall have the following meanings:

16 (1) BOND FINANCING AGREEMENT. An agreement or other  
17 document relating to the sale or issuance of bonds, including,  
18 but not limited to, a bond purchase agreement, a loan  
19 agreement, a refinancing agreement, or documents providing for  
20 bonds sold or issued on a competitive sale basis.

21 (2) BONDS. Bonds, bond anticipation notes, warrants,  
22 warrant anticipation notes, or indebtedness issued or entered  
23 into on behalf of a municipality or local school board for a  
24 term of at least three years or more.

25 (3) BUSINESS DAY. A day, other than a Saturday or a  
26 Sunday, on which commercial banking institutions are open for

1 business in the State of Alabama and a day on which the  
2 payment system of the Federal Reserve System is operational.

3 (4) CAPITAL EXPENDITURE. Any cost or expense of a  
4 type that is properly chargeable to a capital account under  
5 general federal income tax principles.

6 (5) GENERAL OBLIGATION INDEBTEDNESS. A bond  
7 financing agreement which, according to its terms, will be  
8 repaid from any funds at the disposal of the municipality or  
9 local school board.

10 (6) GENERAL OPERATING EXPENSES. Any expense incurred  
11 by a county in the general operation and function of the  
12 county. The term includes salaries and other associated  
13 expenses, but does not include a capital expenditure or  
14 expense.

15 (7) LIMITED OBLIGATION INDEBTEDNESS. Bonds which,  
16 according to their terms, are required to be paid solely from  
17 the proceeds of a specific tax, fee, license, charge, or other  
18 specific revenue stream.

19 (8) NET PRESENT VALUE SAVINGS. The projected cost  
20 savings to the municipality or local school board from  
21 refinancing any bonds, by comparing the net present value of  
22 the costs of the bonds proposed for refunding, including the  
23 original costs of issuance and the payment of principal and  
24 interest on the bonds proposed for refunding, with the net  
25 present value of the costs of the proposed bonds, including  
26 the costs of issuance and refinancing and the payment of  
27 principal and interest on the proposed bonds.

1           (9) SWAP AGREEMENT. A swap agreement as defined in  
2 Article 3 of Chapter 1 of Title 41, Code of Alabama 1975.

3           Section 3. Notwithstanding any other provision of  
4 law, after the effective date of this act, no municipality or  
5 local school board may enter into any bond financing agreement  
6 or other transaction related to establishing bonded  
7 indebtedness that constitutes or creates an obligation, debt,  
8 or charge against the credit or taxing power of the  
9 municipality or local school board until and unless the  
10 municipality or local school board has satisfied the  
11 requirements of Sections 2 through 6.

12           Section 4. (a) In addition to any and all other  
13 documents presented for examination and execution of a bond  
14 financing agreement which, for the purposes of Sections 2  
15 through 6, takes place at the time a municipality or local  
16 school board makes an official award of the bonds, the  
17 municipality or local school board shall execute a government  
18 bond financing review form. The standard review form shall be  
19 prepared by the Department of Examiners of Public Accounts and  
20 shall include statements to the effect that:

21           (1) The municipality or local school board has  
22 considered whether it can satisfy its financial obligations  
23 for the life of the bonds.

24           (2) In the case of limited obligation indebtedness,  
25 the municipality or local school board has identified the  
26 source for the debt service payments for the life of the bonds  
27 and, in the case of general obligation indebtedness, the

1 municipality or local school board has indicated that the full  
2 faith and credit of the municipality or local school board has  
3 been pledged for the debt service payments for the life of the  
4 bonds.

5 (3) The municipality or local school board has  
6 considered the period of usefulness of the improvement or  
7 property for which the bonds are to be issued in light of the  
8 duration of the term of the bonds under the bond financing  
9 agreement.

10 (4) The municipality or local school board  
11 acknowledges that bond proceeds shall not be used for general  
12 operating expenses of the municipality or local school board.

13 (5) The municipality or local school board has  
14 received from the bond underwriter, bond counsel, issuer's  
15 counsel, trustee, and any others associated with the issuance  
16 of bonds an itemized listing of their respective fees and all  
17 other costs which shall not be subject to change prior to the  
18 sale or issuance of bonds.

19 (6) The municipality or local school board has  
20 received from the bond underwriter a clear and understandable  
21 written proposal explaining all details of the proposed bond  
22 issue, its repayment schedule, and any external factors which  
23 could affect the total cost to the municipality or local  
24 school board if it issues the bonds.

25 (7) The municipality or local school board has  
26 considered the effect, if any, that the bonds will have on the

1 municipality or local school board's constitutional debt  
2 limit.

3 (8) The municipality or local school board has  
4 received from the bond underwriter information demonstrating  
5 that the estimated interest rate on the bonds is reasonable  
6 and, that if information regarding similar recent issuances is  
7 available, the interest rates are comparable with other  
8 similar issuances based on current bond market conditions on  
9 the date of execution of the bond financing agreement.

10 (9) The municipality or local school board has  
11 received from the bond underwriter a separate document of the  
12 potential debt service schedule for all municipality or local  
13 school board debt for the time span of the maturity of the  
14 debt obligation at issue and has been advised of the ability  
15 of the municipality or local school board to pay all of the  
16 debt obligations.

17 (b) If the proceeds of the proposed bonds are to be  
18 used in whole or in part for the purpose of refinancing or  
19 refunding outstanding bonds, the government bond financing  
20 review form shall also include statements to the effect that:

21 (1) The municipality or local school board  
22 understands how the issuance of refunding bonds may extend the  
23 municipality or local school board's initial debt repayment  
24 period and the total cost paid by the municipality or local  
25 school board by the end of the refunding period.

26 (2) The municipality or local school board has  
27 considered whether the refunding bonds will create net present

1 value savings for the municipality or local school board,  
2 including the costs of refinancing.

3 (c) In connection with a swap agreement, the  
4 government bond financing review form shall include statements  
5 to the effect that:

6 (1) The municipality or local school board has  
7 complied with paragraph a. of subdivision (2) of Section  
8 41-1-42, Code of Alabama 1975.

9 (2) The municipality or local school board has  
10 reviewed or had explained by the adviser selected as provided  
11 in Section 6 all documentation provided pertaining to the swap  
12 agreement as required in subsection (d).

13 (3) The municipality or local school board has  
14 designated an employee or official who will have primary  
15 responsibility for the consideration, execution, and  
16 monitoring of interest rate swaps and financial hedges entered  
17 into by the municipality or local school board.

18 (4) The municipality or local school board has  
19 determined whether the municipality or local school board's  
20 obligations under the swap agreement constitute a general  
21 obligation indebtedness of the municipality or local school  
22 board and whether the source of payment is sufficient.

23 (5) The municipality or local school board has  
24 sought and received specific information disclosing the  
25 potential risks inherent in the swap agreement including those  
26 risks commonly referred to in the derivatives industry as  
27 basis risk, tax risk, interest rate risk, counterparty risk,

1 termination risk, market-access risk, rollover or anticipation  
2 risk, and credit risk.

3 (d) The government bond financing review form shall  
4 also include a statement acknowledging that all enumerated  
5 items on the review form have been considered by the  
6 municipality or local school board, and that the municipality  
7 or local school board has voted to enter into the bond  
8 financing agreement or swap agreement by an affirmative vote  
9 of a majority of the members of the municipality or local  
10 school board. The statement of acknowledgment shall be signed  
11 by the chair of the municipality or local school board or  
12 another member designated by the municipality or local school  
13 board and the adviser or consultant utilized by the  
14 municipality or local school board pursuant to Section 6.

15 (e) A copy of the government bond financing review  
16 form shall be forwarded to the Department of Examiners of  
17 Public Accounts within 10 business days of the issuance of the  
18 bonds or swap agreement. All government bond financing review  
19 forms shall be kept on file at the Department of Examiners of  
20 Public Accounts and shall be available for public inspection  
21 for a period of seven years.

22 Section 5. (a) In addition to the requirements of  
23 Section 4, the bond financing agreement documents shall  
24 include a detailed itemization of the costs and fees which  
25 will be paid directly by the municipality or local school  
26 board or from bond proceeds under the bond financing  
27 agreement. This itemization shall include a statement



1 acknowledging that the amounts of these costs and fees have  
2 been presented and explained to all members of the  
3 municipality or local school board prior to the sale of bonds.  
4 The acknowledgement statement shall be signed by the chair of  
5 the municipality or local school board or another member  
6 designated by the municipality or local school board and by  
7 the authorized signatory for the bond underwriter.

8 (b) In addition to the requirements of Section 4,  
9 the bond financing agreement documents shall include a  
10 schedule of all of the debt obligations of the municipality or  
11 local school board for the time span of the maturity of the  
12 debt obligation at issue. This schedule shall include a  
13 statement acknowledging that the total amount of all debt  
14 obligations and a schedule of the total debt payments have  
15 been presented and explained to all members of the city  
16 council or local school board prior to the sale of bonds. The  
17 acknowledgement statement shall be signed by the chair of the  
18 city council or local school board or a member designated by  
19 the city council or local school board and by the authorized  
20 signatory for the bond underwriter.

21 (c) In connection with a swap agreement, the  
22 documentation necessary to effectuate the swap agreement shall  
23 also include a statement from the authorized signatory for the  
24 bond underwriter or authorized signatory of the provider of  
25 the swap agreement to the effect that:

1           (1) It has provided the municipality or local school  
2 board with a disclosure of the potential risks inherent in the  
3 swap agreement.

4           (2) It has disclosed all fees associated with the  
5 swap agreement.

6           (3) It has provided the municipality or local school  
7 board with documentation necessary to effectuate the swap  
8 agreement including master agreements, schedules, credit  
9 support annexes, confirmations, legal opinions, fairness  
10 opinions, and any other information necessary to comply with  
11 subdivisions (3) and (5) of subsection (c) of Section 4.

12           Section 6. In preparing the government bond  
13 financing review form, the municipality or local school board  
14 shall consult with and obtain advice from either an attorney  
15 for the municipality or local school board, or, at the option  
16 of the municipality or local school board, a certified public  
17 accountant regarding any and all bond or swap proposals  
18 received by the municipality or local school board. The person  
19 or persons utilized by the municipality or local school board  
20 for advice and consultation shall review all documents to be  
21 included at the execution of the bond financing agreement or  
22 swap agreement.

23           Section 7. This act shall become effective on  
24 October 1, 2018, following its passage and approval by the  
25 Governor, or its otherwise becoming law.