

1 SB202
2 197879-1
3 By Senator Orr
4 RFD: Governmental Affairs
5 First Read: 02-APR-19

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

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25 A BILL
26 TO BE ENTITLED
27 AN ACT

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

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

24 "§11-8A-3.

25 "(a) In addition to any and all other documents
26 presented for examination and execution of a bond financing
27 agreement which, for the purposes of this chapter, takes place

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

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

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

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

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

23 "(5) The county commission has received from the
24 bond underwriter, bond counsel, issuer's counsel, trustee, and
25 any others associated with the issuance of bonds an itemized
26 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 obligations at
17 issue. This schedule shall include a statement acknowledging
18 that the total amount of all debt obligations and a schedule
19 of the total debt payments have been presented and explained
20 to all members of the county commission prior to the sale of
21 bonds. The acknowledgement statement shall be signed by the
22 chair of the county commission or another commission member
23 designated by the county commission and by the authorized
24 signatory for 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 for a term of at least three
24 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.

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

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

18 (8) NET PRESENT VALUE SAVINGS. The projected cost
19 savings to the municipality from refinancing any bonds, by
20 comparing the net present value of the costs of the bonds
21 proposed for refunding, including the original costs of
22 issuance and the payment of principal and interest on the
23 bonds proposed for refunding, with the net present value of
24 the costs of the proposed bonds, including the costs of
25 issuance and refinancing and the payment of principal and
26 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 may
5 enter into any bond financing agreement or other transaction
6 related to establishing bonded indebtedness that constitutes
7 or creates an obligation, debt, or charge against the credit
8 or taxing power of the municipality until and unless the
9 municipality has satisfied the requirements of Sections 2
10 through 6.

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

20 (1) The municipality has considered whether it can
21 satisfy its financial obligations for the life of the bonds.

22 (2) In the case of limited obligation indebtedness,
23 the municipality has identified the source for the debt
24 service payments for the life of the bonds and, in the case of
25 general obligation indebtedness, the municipality has
26 indicated that the full faith and credit of the municipality

1 has been pledged for the debt service payments for the life of
2 the bonds.

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

7 (4) The municipality acknowledges that bond proceeds
8 shall not be used for general operating expenses of the
9 municipality.

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

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

22 (7) The municipality has considered the effect, if
23 any, that the bonds will have on the municipality's
24 constitutional debt limit.

25 (8) The municipality has received from the bond
26 underwriter information demonstrating that the estimated
27 interest rate on the bonds is reasonable and, that if

1 information regarding similar recent issuances is available,
2 the interest rates are comparable with other similar issuances
3 based on current bond market conditions on the date of
4 execution of the bond financing agreement.

5 (9) The municipality has received from the bond
6 underwriter a separate document of the potential debt service
7 schedule for all municipality debt for the time span of the
8 maturity of the debt obligation at issue and has been advised
9 of the ability of the municipality to pay all of the debt
10 obligations.

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

15 (1) The municipality understands how the issuance of
16 refunding bonds may extend the municipality's initial debt
17 repayment period and the total cost paid by the municipality
18 by the end of the refunding period.

19 (2) The municipality has considered whether the
20 refunding bonds will create net present value savings for the
21 municipality, including the costs of refinancing.

22 (c) In connection with a swap agreement, the
23 government bond financing review form shall include statements
24 to the effect that:

25 (1) The municipality has complied with paragraph a.
26 of subdivision (2) of Section 41-1-42, Code of Alabama 1975.

1 (2) The municipality has reviewed or had explained
2 by the adviser selected as provided in Section 6 all
3 documentation provided pertaining to the swap agreement as
4 required in subsection (d).

5 (3) The municipality has designated an employee or
6 official who will have primary responsibility for the
7 consideration, execution, and monitoring of interest rate
8 swaps and financial hedges entered into by the municipality.

9 (4) The municipality has determined whether the
10 municipality's obligations under the swap agreement constitute
11 a general obligation indebtedness of the municipality and
12 whether the source of payment is sufficient.

13 (5) The municipality has sought and received
14 specific information disclosing the potential risks inherent
15 in the swap agreement including those risks commonly referred
16 to in the derivatives industry as basis risk, tax risk,
17 interest rate risk, counterparty risk, termination risk,
18 market-access risk, rollover or anticipation risk, and credit
19 risk.

20 (d) The government bond financing review form shall
21 also include a statement acknowledging that all enumerated
22 items on the review form have been considered by the
23 municipality, and that the municipality has voted to enter
24 into the bond financing agreement or swap agreement by an
25 affirmative vote of a majority of the members of the city
26 council of the municipality. The statement of acknowledgment
27 shall be signed by the chair of the city council of the

1 municipality or another member designated by the municipality
2 and the adviser or consultant utilized by the municipality
3 pursuant to Section 6.

4 (e) A copy of the government bond financing review
5 form shall be forwarded to the Department of Examiners of
6 Public Accounts within 10 business days of the issuance of the
7 bonds or swap agreement. All government bond financing review
8 forms shall be kept on file at the Department of Examiners of
9 Public Accounts and shall be available for public inspection
10 for a period of seven years.

11 Section 5. (a) In addition to the requirements of
12 Section 4, the bond financing agreement documents shall
13 include a detailed itemization of the costs and fees which
14 will be paid directly by the municipality or from bond
15 proceeds under the bond financing agreement. This itemization
16 shall include a statement acknowledging that the amounts of
17 these costs and fees have been presented and explained to all
18 members of the city council of the municipality prior to the
19 sale of bonds. The acknowledgement statement shall be signed
20 by the chair of the city council or another member designated
21 by the municipality and by the authorized signatory for the
22 bond underwriter.

23 (b) In addition to the requirements of Section 4,
24 the bond financing agreement documents shall include a
25 schedule of all of the debt obligations of the municipality
26 for the time span of the maturity of the debt obligation at
27 issue. This schedule shall include a statement acknowledging

1 that the total amount of all debt obligations and a schedule
2 of the total debt payments have been presented and explained
3 to all members of the city council prior to the sale of bonds.
4 The acknowledgement statement shall be signed by the chair of
5 the city council or a member designated by the city council
6 and by the authorized signatory for the bond underwriter.

7 (c) In connection with a swap agreement, the
8 documentation necessary to effectuate the swap agreement shall
9 also include a statement from the authorized signatory for the
10 bond underwriter or authorized signatory of the provider of
11 the swap agreement to the effect that:

12 (1) It has provided the municipality with a
13 disclosure of the potential risks inherent in the swap
14 agreement.

15 (2) It has disclosed all fees associated with the
16 swap agreement.

17 (3) It has provided the municipality with
18 documentation necessary to effectuate the swap agreement
19 including master agreements, schedules, credit support
20 annexes, confirmations, legal opinions, fairness opinions, and
21 any other information necessary to comply with subdivisions
22 (3) and (5) of subsection (c) of Section 4.

23 Section 6. In preparing the government bond
24 financing review form, the municipality shall consult with and
25 obtain advice from either an attorney for the municipality,
26 or, at the option of the municipality, a certified public
27 accountant regarding any and all bond or swap proposals

1 received by the municipality. The person or persons utilized
2 by the municipality for advice and consultation shall review
3 all documents to be included at the execution of the bond
4 financing agreement or swap agreement.

5 Section 7. This act shall become effective on
6 October 1, 2019, following its passage and approval by the
7 Governor, or its otherwise becoming law.