

1 HB213
2 147770-4
3 By Representatives McCutcheon, Greer, Hill, Harper, Ball,
4 Patterson, Johnson (W), Baughn, Hurst, Gaston, Long, Faust,
5 Brown, Melton, Wallace, Beech, Standridge, Jones, Howard,
6 Buttram, Williams (J), Robinson (J) and Roberts
7 RFD: Transportation, Utilities and Infrastructure
8 First Read: 07-FEB-13

1 ENGROSSED

2
3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

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

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

25 "§23-1-174.

26 "The ~~applicants named in the application and their~~
27 ~~respective successors in office shall constitute the members~~

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

1 of the corporation, shall be received in all courts as prima
2 facie evidence of the matters and things therein certified.

3 "§23-1-177.

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

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

26 "(c) Bonds of the corporation may be sold from time
27 to time as the board of directors may deem advantageous and

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

22 " (d) ~~Bonds of the corporation must be sold only at~~
23 ~~public sale, either on sealed bids or at public auction at, to~~
24 ~~the bidder whose bid reflects the lowest net interest cost to~~
25 ~~the corporation for the bonds being sold, computed to their~~
26 ~~relative maturities; provided, that if no bid acceptable to~~
27 ~~the corporation is received it may reject all bids. Notice of~~

1 ~~each such sale shall be given by publication in either a~~
2 ~~financial journal or a financial newspaper published in the~~
3 ~~City of New York, New York and also by publication in a~~
4 ~~newspaper published in the State of Alabama that is~~
5 ~~customarily published not less often than five days during~~
6 ~~each calendar week, each of which notices must be published at~~
7 ~~least one time not less than 10 days prior to the date fixed~~
8 ~~for the sale. The board of directors may fix the terms and~~
9 ~~conditions under which each such sale may be held; provided,~~
10 ~~that none of the bonds may be sold for a price less than the~~
11 ~~face value thereof; and provided, further, that such terms and~~
12 ~~conditions shall not conflict with any of the requirements of~~
13 ~~this article. Bonds of the corporation may be sold at private~~
14 ~~sale or public sale, but if at public sale, only to the bidder~~
15 ~~whose bid reflects the lowest net interest cost to the~~
16 ~~corporation for the bonds being sold, computed to their~~
17 ~~relative maturities, in such manner and at such price or~~
18 ~~prices and at such time or times as may be determined by the~~
19 ~~board of directors to be most advantageous.~~

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

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

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

25 "(g) All contracts made and all bonds issued by the
26 corporation pursuant to the provisions of this article shall
27 be solely and exclusively obligations of the corporation and

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

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

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

27 "§23-1-178.

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

1 the purpose of refunding the principal of outstanding bonds of
2 the corporation and of paying any premium that may be
3 necessary to be paid in order to redeem or retire the bonds to
4 be refunded.

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

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

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

14 "§23-1-181.

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

17 "(1) BONDS. Such term, without qualifying words or
18 phrases, means bonds of the corporation issued under this
19 article.

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

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

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

27 "(5) HIGHWAY GASOLINE TAX.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 identification markers on motor vehicles that is provided for
2 in Section 40-17-150.

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

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

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

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

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

1 ~~that may at any time be issued under the provisions of Article~~
2 ~~10 of this chapter."~~

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

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Transportation,
Utilities and Infrastructure 07-FEB-13

Read for the second time and placed
on the calendar 1 amendment 14-FEB-13

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

Yeas 94, Nays 0, Abstains 0

Jeff Woodard
Clerk