

1 HB613
2 117454-3
3 By Representatives DeMarco, Canfield, Treadaway, Todd, Thomas
4 (E), Moore (P), McClurkin, Rogers, Drake, McAdory, Payne,
5 Scott, Moore (M), Coleman, Robinson (O), Newton (D), Williams
6 (J) and Hilliard (N & P)
7 RFD: Jefferson County Legislation
8 First Read: 23-FEB-10

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to Jefferson County; to provide certain
14 notice, hearing, and disclosure requirements for certain debt
15 issued by the county and for certain swap agreements entered
16 into by the county; to require a public hearing before the
17 county enters into a binding agreement to issue debt or a
18 binding swap agreement and to specify the timing of the
19 hearing; to require the county to publish notice of the public
20 hearing and to specify the required content and timing of the
21 notice; to require competitive bidding of certain swap
22 agreements; to specify the procedure for and requirements for
23 bidding; to require the county file a written report of
24 certain agreements in the public records of the county; to
25 specify the required content and timing of the written report;
26 to prohibit the county from making a payment to any
27 individual, business, or professional organization before

1 issuing payment; to require the county to obtain a written
2 statement from the individual, business, or professional
3 organization declaring certain information regarding the
4 amount and purpose of the payment; and to require the written
5 statement to be filed in the public records of the county.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Application.

8 This act shall apply to both of the following:

9 (1) Any debt issued by Jefferson County if the
10 amount of the debt to be issued in a single transaction, or in
11 a series of related transactions, exceeds five million dollars
12 (\$5,000,000).

13 (2) Any swap agreement entered into by Jefferson
14 County.

15 Section 2. Definitions.

16 For purposes of this act, the following terms have
17 the following meanings:

18 (1) COUNTY. Jefferson County, Alabama.

19 (2) DEBT. Indebtedness for borrowed money, whether
20 in the form of bonds, warrants, notes, or other similar
21 instruments or capitalized leases.

22 (3) OFFICIAL STATEMENT. An official statement,
23 offering memorandum, placement memorandum, or a similar
24 document prepared for distribution to investors or purchasers
25 of debt. A preliminary official statement refers to an
26 official statement prepared for distribution to prospective
27 investors or purchasers, and a final official statement refers

1 to an official statement prepared for distribution after the
2 final terms of issuance have been determined.

3 (4) QUALIFIED SWAP PROVIDER. A counterparty as
4 defined in Section 41-1-41, Code of Alabama 1975.

5 (5) SWAP AGREEMENT. a. Any interest rate swap
6 agreement, interest rate cap agreement, interest rate floor
7 agreement, interest rate collar agreement, or any other
8 similar agreement, including any option to enter into any of
9 the foregoing; or b. Any agreement subject to Article 3 of
10 Chapter 1 of Article 41 of the Code of Alabama 1975.

11 Section 3. Notice and hearing.

12 (a) The county may not issue debt unless it gives
13 notice of the proposed debt issuance as provided in subsection
14 (b) and a hearing is held as provided in Section 4. The county
15 may not enter into a swap agreement unless notice of the
16 proposed swap agreement is given as provided in subsection
17 (c), a hearing is held as provided in Section 4, and
18 competitive bids for the swap agreement are requested as
19 provided in Section 5.

20 (b) The county shall provide notice of a public
21 hearing on the proposed issuance of debt. The notice shall be
22 published in a newspaper of general circulation in the county
23 not less than four days before the public hearing and shall
24 include a brief description of all of the following
25 information with respect to the proposed debt:

1 (1) The maximum principal amount of debt to be
2 issued and the purpose or purposes for which the debt is to be
3 issued.

4 (2) The interest rate or rates on the debt, if
5 established as of the date of the notice, or, if not
6 established as of such date, the terms and procedures by which
7 the interest rates will be established.

8 (3) The expected final maturity of the debt.

9 (4) The expected source of payment of the debt.

10 (5) Any security expected to be provided for
11 repayment of the debt.

12 (6) If the debt will be sold in a negotiated sale or
13 through a bidding process, the manner in which the debt is
14 expected to be sold.

15 (7) If the debt will be sold through a bidding
16 process, a brief description of the expected terms and
17 procedures for bidding and award.

18 (8) If the debt will not be sold through a bidding
19 process, the reasons why the county determined that a
20 negotiated sale was desirable.

21 (9) If the debt will be sold to an underwriter or
22 group of underwriters in connection with a public offering of
23 the debt, the expected identity of each underwriter.

24 (10) If the debt will be purchased by one or more
25 banks or other lenders in a direct placement of the debt, the
26 expected identity of each purchaser of the debt and each
27 placement agent.

1 (11) A description of any credit enhancement
2 expected to be provided as security for the debt.

3 (12) The expected sources and uses of funds for the
4 purposes of the issuance of the debt.

5 (13) A list of each person who is expected to be
6 paid, directly or indirectly, for services rendered in
7 connection with the issuance of the debt, and an estimate of
8 the expected purpose and amount of each such payment.

9 (14) If a preliminary official statement is being
10 prepared in connection with the issuance of the debt, the
11 place or places where a member of the public may obtain a copy
12 of the preliminary official statement. The copy may be posted
13 on a website maintained by the county or the public filing
14 system maintained by the Municipal Securities Rulemaking
15 Board.

16 (c) If information required by subsection (b) is
17 included in a preliminary official statement being made
18 available to potential investors and the preliminary official
19 statement will be available not less than three days before
20 the public hearing, the notice may adopt by reference
21 information included in the preliminary official statement.

22 (d) The county shall provide notice of a public
23 hearing with respect to any proposed swap agreement. The
24 notice shall be published in a newspaper of general
25 circulation in the county not less than four days before the
26 public hearing and shall include a brief description of all of

1 the following information with respect to the proposed swap
2 agreement:

3 (1) The maximum notional amount of the swap
4 agreement and the purpose or purposes for which the swap
5 agreement is expected to be entered into.

6 (2) The expected terms of payment by the county and
7 its counter party.

8 (3) The expected termination date and other
9 termination provisions of the swap agreement.

10 (4) The expected source of payment by the county.

11 (5) Any security expected to be provided by the
12 county for its payment obligation under the swap agreement.

13 (6) A brief description of the terms and procedures
14 expected to be used for bidding and award of a swap agreement.

15 (7) A description of any credit enhancement or other
16 agreements expected to be provided as security for the
17 obligations of the county or its counter party.

18 (8) The expected sources and uses of funds for the
19 swap agreement transaction.

20 (9) The name of each person who is expected to be
21 paid, directly or indirectly, for services rendered in
22 connection with the swap agreement, and an estimate of the
23 expected purpose and amount of each such payment.

24 (e) If information required by subsection (d) is
25 included in a preliminary official statement being made
26 available to potential investors in debt related to the swap
27 agreement and the preliminary official statement will be

1 available not less than three days before the public hearing,
2 the notice may adopt by reference information included in the
3 preliminary official statement.

4 Section 4. Public hearing.

5 Not less than three days nor more than 10 days
6 before the date that the county enters into a binding
7 agreement to issue debt or enters into a binding swap
8 agreement, the county shall hold a public hearing on the
9 proposed debt or swap agreement. A majority of the governing
10 body of the county shall be present at the public hearing. The
11 public hearing shall provide an opportunity for interested
12 persons to address questions to members of the county
13 governing body about the debt or swap agreement or the
14 contents of the notice or any preliminary official statement,
15 subject to reasonable procedures established by the governing
16 body.

17 Section 5. Public bidding of swap agreements.

18 The county shall competitively bid all swap
19 agreements using the following procedures:

20 (1) The county shall invite not less than four
21 qualified swap providers to make independent written proposals
22 to enter into a swap agreement delivered in person or
23 transmitted electronically.

24 (2) The county shall provide each potential
25 qualified swap provider a set of bid documents. The bid
26 documents shall be in the form proposed by the county to be
27 executed and delivered in connection with the swap agreement.

1 The bid documents shall include all of the terms and
2 conditions customarily included in such documents and
3 appropriate to the circumstances. The terms of the swap
4 agreement shall be fully specified, including, without
5 limitation, such terms as payment frequencies, day counting
6 conventions, method of averaging, reference indices, and
7 similar terms. The bid documents shall leave blank a single
8 term expressed as an interest rate or monetary amount, herein
9 called "bid number," to be proposed by qualified swap
10 providers submitting bids and to be included in the definitive
11 swap agreement and related documents upon determination of the
12 best bid. The bid number shall be a number that is critical to
13 the value of the swap agreement to both parties.

14 (3) The county shall provide each potential
15 qualified swap provider financial and other information
16 necessary and appropriate to a determination by a qualified
17 swap provider of whether and how to respond to the request for
18 proposal. The county shall respond to requests for additional
19 information or modifications of the set of documents in
20 writing with copies to all potential qualified swap providers.

21 (4)a. The governing body of the county shall do all
22 of the following:

23 1. Authorize an official of the county to establish
24 a deadline date and time for receipt of proposals for a swap
25 agreement.

26 2. Authorize the execution and delivery of all
27 documents required to complete the swap transaction.

1 3. Authorize the official to receive the bid numbers
2 from the qualified swap providers and determine the best bid.

3 4. Establish either a floor or a ceiling, known as a
4 bid limit, for the best bid.

5 b. Determination of the best bid complying with the
6 bid limit shall be made immediately after the deadline for
7 submission of bid numbers, and the authorized official shall
8 then execute and deliver the swap documents.

9 c. All bid numbers received shall be publicly
10 announced.

11 d. The county may reject all bids.

12 (5) The qualified swap provider who offers the best
13 bid shall furnish a statement under oath as required in
14 Section 7.

15 Section 6. Information filing by county.

16 (a) Not less than seven days after the county enters
17 into a binding agreement for the issuance of debt or enters
18 into a binding swap agreement, it shall file a report in the
19 public records of the county. The report shall include all of
20 the following:

21 (1) The final terms of such debt or swap agreement
22 to the extent such terms were referenced or described in the
23 related notice of public hearing.

24 (2) A description of any variation in the expected
25 facts and circumstances described in the related notice of the
26 public hearing, or the related preliminary official statement,

1 and the final terms of the debt or the swap agreement, and the
2 reason for such variation.

3 (3) Each person who has been paid, or will be paid,
4 directly or indirectly, for services rendered in connection
5 with the debt or swap agreement, including the underwriter
6 rendering underwriting or investment banking services, and the
7 amount of each payment.

8 (b) If the information required in the report
9 delivered pursuant to subsection (a) is included in a final
10 official statement prepared in connection with the debt, or
11 the debt related to the swap agreement, the report may adopt
12 by reference the information in the final official statement.

13 Section 7. Statements under oath by third parties.

14 (a) The county may not make any payment to a person
15 described in subdivision (3) of subsection (a) of Section 6
16 unless the county obtains a written statement under oath by
17 the person declaring all of the following:

18 (1) The amount and purpose of the payment received
19 by the person.

20 (2) The identity of each third person who received,
21 directly or indirectly, any portion of the payment.

22 (3) The amount and purpose of any payment to a third
23 party.

24 (b) Each statement obtained by the county shall be
25 filed in the public records of the county. The county may not
26 enter into any swap agreement unless the county obtains a
27 written statement under oath by the person identifying any

1 third person to whom the payment was made and the amount paid
2 to the person.

3 Section 8. The provisions of this act are severable.
4 If any part of this act is declared invalid or
5 unconstitutional, that declaration shall not affect the part
6 which remains.

7 Section 9. All laws or parts of laws, whether
8 general, specific, or local, in conflict with the provisions
9 of this act are repealed to the extent of the conflict.

10 Section 10. This act shall become effective
11 immediately following its passage and approval by the
12 Governor, or its otherwise becoming law.