

1 SB289
2 157177-1
3 By Senator Dial
4 RFD: Commerce, Transportation, and Utilities
5 First Read: 28-JAN-14

SYNOPSIS: Under existing law, the Alabama Federal Aid Highway Finance Authority is authorized to issue bonds to finance transportation projects that qualify for federal aid funding. Bonds issued by the authority are repaid from federal aid funds provided to the state.

In order to enhance the Authority's ability to issue bonds at a lower rate of interest, this bill would amend Sections 23-1-181, 23-1-301, 23-1-305, 23-1-309, 23-1-311, 23-1-313, 23-1-314 and 23-1-315 to provide further for the membership of the Alabama Federal Aid Highway Finance Authority; to eliminate unnecessary references to interest coupons on bonds issued by the authority; to provide for the pledge of certain state gasoline tax revenues to secure bonds issued by the authority; to provide that pledges by the authority to secure bonds issued by it may include some but not all funds appropriated and pledged by law, and may be on parity with pledges to secure other

1 obligations of the authority, or in order of
2 priority, within the discretion of the authority;
3 to provide that the pledges of certain state
4 gasoline tax revenues to secure bonds issued by the
5 authority shall be on parity with pledges of those
6 tax revenues to secure obligations issued by the
7 Alabama Highway Finance Corporation; to provide
8 further for investment of proceeds of bonds issued
9 by the authority and of pledged revenues held in
10 the sinking fund created to secure such bonds; and
11 to define certain terms.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 To provide further for the membership of the Alabama
18 Federal Aid Highway Finance Authority; to eliminate
19 unnecessary references to interest coupons on bonds issued by
20 the authority; to provide for the pledge of certain state
21 gasoline tax revenues to secure bonds issued by the authority;
22 to provide that pledges by the authority to secure bonds
23 issued by it may include some but not all funds appropriated
24 and pledged by law, and may be on parity with pledges to
25 secure other obligations of the authority, or in order of
26 priority, within the discretion of the authority; to provide
27 that the pledges of certain state gasoline tax revenues to

1 secure bonds issued by the authority shall be on parity with
2 pledges of such tax revenues to secure obligations issued by
3 the Alabama Highway Finance Corporation; to provide further
4 for investment of proceeds of bonds issued by the authority
5 and of pledged revenues held in the sinking fund created to
6 secure such bonds; and to define certain terms.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Sections 23-1-181, 23-1-301, 23-1-305,
9 23-1-309, 23-1-311, 23-1-313, 23-1-314 and 23-1-315 of the
10 Code of Alabama 1975, are amended to read as follows:

11 "§23-1-181.

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

14 "(1) BONDS. Such term, without qualifying words or
15 phrases, means bonds of the corporation issued under this
16 article.

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

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

22 "(4) Gasoline tax appropriation statute. Division 2
23 of Article 2 of Chapter 17 of Title 40.

24 "(5) Highway gasoline tax.

25 "a. The excise tax levied in Section 40-17-31, as
26 amended, exclusive of those portions of the tax in respect of

1 aviation fuel and marine gasoline, as those terms are used in
2 the section; and

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

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

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

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

25 "(1) So much as may be necessary for such purpose of
26 those portions of the motor vehicle license taxes and
27 registration fees that are provided to be distributed to the

1 state pursuant to the provisions of Division 1 of Article 5 of
2 Chapter 12 of Title 40 as amended, remaining after the costs
3 of collection thereof.

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

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

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

23 "b. the excise tax levied by Article 3 of Chapter 17
24 of Title 40, exclusive of that portion of the tax in respect
25 of gasoline.

26 "The term "costs of collection," as used in this
27 subdivision, shall mean that portion of the excise taxes

1 referred to in this subdivision that may be appropriated by
2 the Legislature to the Department of Revenue for its operating
3 expenses.

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

15 "(5) To such extent and to such extent only as the
16 revenues appropriated under subdivisions (1), (2), (3) and (4)
17 of this subsection may not be sufficient to pay at their
18 respective maturities the principal of and interest on the
19 bonds, so much as may be necessary for such purpose, when
20 added to the amounts appropriated in subdivisions (1), (2),
21 (3) and (4), of the receipts from the fee in respect of
22 identification markers on motor vehicles that is provided for
23 in Section 40-17-150.

24 "(c) All moneys hereby appropriated and pledged
25 shall constitute a sinking fund for the purpose of paying the
26 principal of and interest on the bonds. All pledges made by
27 the corporation shall take precedence among themselves in the

1 order of the adoption of the resolutions making such pledges,
2 except as may be otherwise provided in such resolutions;
3 provided, however, that the appropriation and pledge of the
4 state's share of the net gasoline tax proceeds shall be on
5 parity with the pledge contained in Section 23-1-314 to secure
6 obligations issued by the Alabama Federal Aid Highway Finance
7 Authority."

8 "§23-1-301.

9 "When used in this article, the following words and
10 phrases shall have the following respective meanings unless
11 the context clearly indicates otherwise:

12 "(1) AUTHORITY. The Alabama Federal Aid Highway
13 Finance Authority, a public corporation and instrumentality of
14 the state authorized to be organized under the provisions of
15 this article.

16 "(2) BOARD OF DIRECTORS. The board of directors of
17 the authority.

18 "(3) BONDS. The bonds, including refunding bonds
19 issued to refund outstanding obligations, that in this article
20 are authorized to be sold and issued by the authority.

21 "(4) CORPORATION. The authority.

22 "(5) HIGHWAY GASOLINE TAX. The excise tax levied
23 under subdivision (1) of subsection (a) of Section 40-17-325,
24 with the exception of those portions of the tax levied on
25 aviation fuel and marine gasoline.

26 "(56) LEGISLATURE. The Legislature of Alabama.

1 "(7) NET GASOLINE TAX PROCEEDS. The entire proceeds
2 from the highway gasoline tax less the cost of collection and
3 less any refunds of the proceeds pursuant to the provisions of
4 Article 12 of Chapter 17 of Title 40.

5 "~~(6)~~8) NOTE. The authority's promise to pay solely
6 from the funds provided by this article which has a specified
7 maturity date not later than three years after its date, which
8 recites on its face that it is issued in anticipation of the
9 sale by the authority of bonds and which is payable to the
10 order of a named payee.

11 "~~(7)~~9) OBLIGATIONS. Any bonds, temporary bonds or
12 notes authorized by this article to be issued by the
13 authority.

14 "~~(8)~~10) STATE. The State of Alabama.

15 "~~(10)~~11) STATE'S SHARE OF NET GASOLINE TAX PROCEEDS.
16 The portion of the net gasoline tax proceeds allocated and
17 appropriated for state highway purposes in Section 40-17-359,
18 less such amounts as are allocated by such statute to other
19 specific uses.

20 "~~(9)~~12) TEMPORARY BOND. Any bond issued under this
21 article which has a specified maturity date not later than
22 three years after its date and which recites on its face that
23 it is issued in anticipation of the sale by the authority of
24 bonds.

25 "~~(10)~~13) COST. As applied to any highway construction
26 project, all costs of construction or acquisition of any part
27 of any such highway construction project, including, but

1 without limitation to, the costs of supervising, inspecting
2 and constructing any such highway construction project and all
3 costs and expenses incidental thereto, the costs of locating,
4 surveying and mapping, resurfacing, restoration and
5 rehabilitation, acquisition of rights-of-way, relocation
6 assistance, elimination of hazards of railway-grade crossings,
7 acquisition of replacement housing sites, acquisition,
8 rehabilitation, relocation, and construction of replacement
9 housing and improvements which directly facilitate and control
10 traffic flow, including grade separation of intersections,
11 widening of lanes, channelization of traffic, traffic-control
12 systems and passenger loading and unloading areas, and any
13 other cost of any federal aid projects which is to be repaid
14 or reimbursed to the state by the United States of America
15 pursuant to the written agreement provided for in Section
16 23-1-313.

17 " (~~11~~14) FEDERAL AID PROJECT. Any road, street,
18 parkway, right of way, bridge, railroad crossing, terminal,
19 drainage structure, sign, guardrail, structure, interstate,
20 surface, resurface, shoulder, roadside, or any other work
21 eligible for federal aid funding assistance under Title 23,
22 Chapter 1, of the United States Code and applicable
23 regulations.

24 " (~~12~~15) FEDERAL SHARE. That portion of the cost of
25 any federal aid projects which is to be repaid or reimbursed
26 to the state by the United States of America pursuant to the
27 written agreement provided for in Section 23-1-313."

1 "§23-1-305.

2 "(a) The members of the corporation shall be the
3 Governor, the Director of Finance, the Director of
4 Transportation, the Attorney General and the State Treasurer
5 ~~applicants named in the application and their respective~~
6 ~~successors in office shall constitute the members of the~~
7 ~~corporation.~~

8 "(b) The Governor shall be the president of the
9 corporation, the Director of Finance shall be the
10 vice-president of the corporation, the Director of
11 Transportation shall be the secretary of the corporation, and
12 the State Treasurer shall be the treasurer of the corporation
13 and shall act as custodian of its funds.

14 "(c) The members of the corporation shall constitute
15 all the members of the board of directors of the corporation,
16 and any three members of said board of directors shall
17 constitute a quorum for the transaction of business.

18 "(d) Should any of said officials of the state die
19 or should his term of office as Director of Finance, Director
20 of Transportation , Attorney General, State Treasurer, or
21 Governor, as the case may be, expire or should he resign
22 therefrom, his successor in office shall take his place as a
23 member, officer, and director of the corporation.

24 "(e) No member, officer, or director of the
25 corporation shall draw any salary in addition to that now
26 authorized by law for any service he may render or any duty he
27 may perform in connection with the corporation.

1 "(f) All proceedings had and done by the board of
2 directors shall be reduced to writing by the secretary of the
3 corporation and recorded in a substantially bound book. Copies
4 of such proceedings, when certified by the secretary of the
5 corporation under the seal of the corporation, shall be
6 received in all courts as prima facie evidence of the matters
7 and things therein certified."

8 "§23-1-309.

9 "The obligations authorized by this article shall be
10 signed by the president or vice-president of the authority, as
11 the board of directors shall designate, and attested by its
12 secretary or an assistant secretary, as the board of directors
13 shall designate; provided, that a facsimile of the signature
14 of one but not of both of the said officers may be printed or
15 otherwise reproduced on any of the obligations authorized by
16 this article in lieu of their being manually signed. ~~All~~
17 ~~interest coupons applicable to the bonds or temporary bonds~~
18 ~~shall be signed by the president or vice-president of the~~
19 ~~authority, as the board of directors shall designate;~~
20 ~~provided, that a facsimile of the signature of such officer~~
21 ~~may be printed or otherwise reproduced on any of the interest~~
22 ~~coupons in lieu of their being manually signed.~~ The seal of
23 the authority shall be impressed on the bonds and temporary
24 bonds authorized by this article; provided, that a facsimile
25 of the said seal may be printed or otherwise reproduced in
26 lieu of being manually impressed thereon."

27 "§23-1-311.

1 "(a) The obligations authorized by this article
2 shall not be general obligations of the authority, but shall
3 be payable solely out of the funds appropriated and pledged in
4 or permitted to be pledged pursuant to Sections 23-1-314 and
5 23-1-315.

6 "(b) As security for the payment of the principal of
7 and interest on the obligations issued by it under this
8 article, the authority is hereby authorized and empowered to
9 pledge for payment of the said principal and interest the
10 funds that are appropriated and pledged in or permitted to be
11 pledged pursuant to Sections 23-1-314 and 23-1-315 for payment
12 of said principal and interest, and to pledge all of such
13 funds or only certain of such funds for payment of said
14 principal and interest, all within the discretion of the
15 authority.

16 "(c) Any notes or temporary bonds issued under this
17 article shall also be payable from the proceeds of any bonds
18 in the anticipation of which such notes or temporary bonds are
19 issued.

20 "(d) All contracts made and all obligations issued
21 by the authority pursuant to the provisions of this article
22 shall be solely and exclusively the obligation of the
23 authority and shall not be an obligation or debt of the state.

24 "(e) Any obligation issued under this article,
25 except bonds or temporary bonds registered as to principal or
26 as to both principal and interest, and any interest coupons
27 applicable thereto, shall be construed to be negotiable

1 instruments although payable solely from a specified source as
2 provided in this article."

3 "§23-1-313.

4 "The authority shall pay out of the proceeds from
5 the sale of the obligations authorized by this article all
6 expenses that the board of directors may deem necessary and
7 advantageous in connection with the sale and issuance thereof.
8 The proceeds from the issue of any obligations authorized by
9 this article, (i) except the proceeds of bonds which were
10 issued to pay principal and interest of temporary bonds or
11 notes and in anticipation of which such temporary bonds or
12 notes shall have been issued, and (ii) except the proceeds of
13 refunding bonds issued to refund any outstanding obligation,
14 remaining after paying the expenses of their sale and
15 issuance, shall be deposited in the State Treasury, shall be
16 credited to the Road and Bridge Fund and shall be subject to
17 be withdrawn by the authority, upon the approval of the State
18 Department of Transportation and the Governor, but only for
19 the purpose of paying the federal share of the cost of federal
20 aid projects ~~on Federal Aid Projects~~ or work incidental or
21 related to any such construction within the state (including
22 the acquisition of property necessary for such construction
23 and related work) to be repaid to the state by the federal
24 government, and such proceeds shall be used for no other
25 purpose. The proceeds from the sale of the obligations shall
26 not be expended for any highway construction project until
27 such time as the United States Secretary of Transportation or

1 his designated representative shall have approved the design
2 and location of the project, shall have formally stated in
3 writing that such project will be eligible for federal aid
4 matching funds when such funds become available and shall have
5 entered into a written agreement providing for the repayment
6 of such funds. Provided, however, in cases where the Federal
7 Highway Administration has delegated the authority to the
8 State Department of Transportation to approve the design,
9 location, and programming of federal funds for certain federal
10 aid projects or classes of projects, then the approval by the
11 State Department of Transportation shall be sufficient.

12 Proceeds of bonds issued to provide funds for payment of the
13 principal of and interest on temporary bonds or notes issued
14 in anticipation of the sale and issuance of such bonds shall
15 be used solely for the purpose of paying the expenses of the
16 sale and issuance of such bonds and the payment of the
17 principal of and interest on such temporary bonds or notes.

18 Proceeds of refunding bonds issued for the purpose of
19 refunding any outstanding obligations of the authority
20 remaining after payment of the expenses of their issuance
21 shall be used solely for payment of the principal of and
22 interest on such outstanding obligations of the authority and
23 for paying any premium that may be necessary to be paid in
24 order to redeem and retire the obligations to be refunded."

25 "§23-1-314.

26 "(a) For the purpose of providing funds to enable
27 the authority to pay at their respective maturities and due

1 dates the principal of and interest on the obligations that
2 may be issued by it under this article at any time after March
3 1, 2014, there hereby is irrevocably pledged and appropriated
4 so much as shall be necessary for the purpose of the state's
5 share of net gasoline tax proceeds.

6 (b) In addition, for the purpose of providing funds
7 to enable the authority to pay at their respective maturities
8 and due dates the principal of and interest on the obligations
9 that may be issued by it under this article, there hereby is
10 irrevocably pledged and appropriated each year all federal aid
11 funds for federal aid projects to be received by the State
12 Department of Transportation from the United States government
13 to the extent that such funds may be required to pay the
14 principal of and interest on such obligations, ~~and the State~~
15 ~~Department of Transportation is hereby authorized and directed~~
16 ~~to set aside the first moneys so received in each such fiscal~~
17 ~~year and deposit the same in the sinking fund provided for in~~
18 ~~subsection (b) of this section until there shall have been~~
19 ~~accumulated therein an amount at least sufficient to pay the~~
20 ~~principal of and interest on the obligations issued by the~~
21 ~~authority hereunder which mature, are subject to mandatory~~
22 ~~redemption or otherwise become due during the 12-month period~~
23 ~~of such federal fiscal year.~~ All federal aid funds for federal
24 aid projects received by the State Department of
25 Transportation from the United States government during each
26 such federal fiscal year shall be held in trust by the state
27 and applied to the extent required to the payment of the

1 principal of and interest on the obligations authorized to be
2 issued under this article.

3 " (~~b~~c) All moneys hereby appropriated and pledged
4 shall be paid into the State Treasury and shall constitute a
5 sinking fund which shall be held in trust to be used to pay
6 the principal of and interest on the obligations; provided,
7 however, that the pledge of the state's share of net gasoline
8 tax proceeds shall be on parity with the pledge contained in
9 23-1-181 to secure obligations issued by the Alabama Highway
10 Finance Corporation. As security for the payment of the
11 principal of and interest on the obligations issued under this
12 article, the authority is authorized to pledge the proceeds of
13 the appropriation and pledge provided for in this section. All
14 pledges made by the authority shall take precedence among
15 themselves in the order of the adoption of the resolutions
16 making such pledges, except as may be otherwise provided in
17 such resolutions. The State Department of Transportation is
18 hereby authorized and directed to set aside the first moneys
19 received out of the revenues pledged hereunder in each fiscal
20 year and deposit the same in the sinking fund provided for in
21 this subsection (c) until there shall have been accumulated
22 therein an amount at least sufficient to pay the principal of
23 and interest on the obligations issued by the authority
24 hereunder which mature, are subject to mandatory redemption or
25 otherwise become due during such fiscal year."

26 "§23-1-315.

1 "Any funds held as the proceeds of obligations
2 issued by the authority under this article and any funds held
3 by the State Treasurer in the sinking fund provided for the
4 payment of such obligations shall be invested in obligations
5 of the United States of America or in certificates of deposit
6 secured by a deposit of obligations of the United States of
7 America to the full amount of such certificates of deposit,
8 and in investment agreements, repurchase agreements, or other
9 investment arrangements fully collateralized by any of the
10 foregoing, and the interest to be earned on such investment of
11 funds may be pledged by the authority to the payment of the
12 principal of and interest on the obligations issued by the
13 authority under this article."

14 Section 2. The provisions of this act are severable.
15 If any part of this act is declared invalid or
16 unconstitutional, that declaration shall not affect the part
17 which remains.

18 Section 3. This act shall become effective
19 immediately following its passage and approval by the
20 Governor, or its otherwise becoming law.