

1 HB4
2 215157-3
3 By Representative Clouse
4 RFD: Ways and Means General Fund
5 First Read: 27-SEP-21

ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

Relating to the finance and construction and renovation of prisons; to provide legislative findings and intent; to amend Sections 14-2-1, 14-2-6, 14-2-12, 14-2-13.1, 14-2-14, 14-2-16, 14-2-19, 14-2-21, 14-2-28, and 14-2-34, Code of Alabama 1975, to allow the Alabama Corrections Institution Finance Authority to issue bonds in an amount not to exceed \$785 million for the purpose of implementing a prison modernization plan in a phased approach that would replace existing bed space in Department of Corrections facilities through the construction of a new specialized men's prison facility on state-owned land in Elmore County providing specialized services to inmates; the construction of a new prison facility for male inmates on state-owned land in Escambia County; the construction of a new women's prison facility on state-owned land in Elmore County; the renovation and improvement of existing state-owned prison facilities in certain counties and an additional existing facility to be selected by the authority; to define certain terms; to revise the membership of the authority; to require reporting to the Joint Legislative Prison Oversight Committee; to further

1 provide for actions to be taken upon payment of all bonds
2 issued by the authority; to create the Correctional Facilities
3 Maintenance Fund; and to create the Department of Corrections
4 - Correctional Capital Improvement Fund.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. The Legislature finds and declares the
7 following:

8 (1) Many of the existing prison facilities in this
9 state are well beyond their normal design service life, most
10 existing prison facility infrastructure lacks sustained
11 maintenance, and lifecycle replacement has not been routinely
12 performed on all facilities. The average age of operational
13 prison facilities used by the Department of Corrections is 44
14 years. Additionally, the physical plant conditions have
15 continued to deteriorate in many facilities, and the design
16 and layout of the existing facilities is antiquated and not
17 optimally suited for the delivery of necessary services to
18 inmates or to fully realize the benefits of modern technology.
19 In many facilities, renovation would be uneconomical or
20 cost-prohibitive.

21 (2) It is the intent of this act to implement a plan
22 to replace existing prison facility capacity with new or
23 renovated capacity in the prison facilities using a phased
24 approach.

25 (3) It is necessary to prioritize the construction
26 of a men's prison facility to provide enhanced health care
27 services, including outpatient and inpatient medical and

1 mental health services, substance abuse and addiction
2 treatment, and educational services and programs, and to
3 increase delivery of these services efficiently.

4 (4) It is also necessary to prioritize the
5 construction of a 4,000-bed men's prison facility to provide
6 transition space for those inmates currently housed in
7 facilities that are in critical need of renovations and
8 improvements, and to construct a new women's prison facility.

9 (5) A phased approach in constructing new prison
10 facilities and renovating and improving some or portions of
11 existing prison facilities, coupled with the use of any
12 funding sources, available now or in the future, and
13 appropriated for these specific purposes, is a fiscally
14 responsible and practical approach to addressing the critical
15 needs of the current prison infrastructure.

16 (6) It is the intent of the Legislature to fully
17 fund Phase I of construction with a combination of issuing
18 bonds authorized by this act and direct appropriation of other
19 available funds. It is further the intent of the Legislature
20 that future phases of the plan set forth in this act shall be
21 funded on a pay-as-built basis or as otherwise authorized by
22 this act.

23 Section 2. Sections 14-2-1, 14-2-6, 14-2-12,
24 14-2-13.1, 14-2-14, 14-2-16, 14-2-19, 14-2-21, 14-2-28, and
25 14-2-34, Code of Alabama 1975, are amended to read as follows:

26 "§14-2-1.

1 "For the purposes of this chapter, the following
2 terms shall have the meanings respectively ascribed to them by
3 this section:

4 "(1) AUTHORITY. The public corporation organized
5 pursuant to the provisions of this chapter.

6 "(2) COMMISSION. The Building Commission created by
7 Section 41-9-140 and its successors as the state agency for
8 awarding construction contracts and supervising construction.

9 "(3) DEPARTMENT. The Alabama Department of
10 Corrections created by Section 14-1-1.1 and its successors as
11 the state agency responsible for supervising and controlling
12 the operation of the correctional institutions of the state.

13 "(4) ESCAMBIA MEN'S PRISON FACILITY. A prison
14 facility, including all real property, buildings, and
15 improvements, designed to house at least 4,000 male inmates
16 and with intake capability, to be located on land owned by the
17 state or the authority as of December 1, 2020, in Escambia
18 County, as provided in Section 14-2-12(c) (2) a.

19 "~~(4)~~ (5) STATE. The State of Alabama.

20 "~~(5)~~ (6) BONDS. The bonds issued under the provisions
21 of this chapter.

22 "~~(6)~~ (7) FACILITIES. Such term includes any one or
23 more of the following:

24 "a. Prisons;

25 "b. Buildings and enclosures for housing,
26 containing, or supervising prisoners; and

1 "c. Any facilities necessary or useful in connection
2 with prisons, buildings, or enclosures, including, without
3 limiting the generality of the foregoing, hospitals, offices,
4 correctional officers' quarters and residences, warehouses,
5 garages, storage facilities, abattoirs, cold storage plants,
6 canning plants, laundries, and manufacturing plants ~~for the~~
7 ~~employment of prison labor,~~ educational and other programming
8 facilities, medical, mental health, and other health care
9 facilities, and substance abuse and addiction treatment
10 facilities.

11 "~~(7)~~ (8) KILBY PROPERTY. Such term includes all of
12 the real property commonly referred to as Kilby prison
13 property, embracing not only the real property owned by the
14 state on which Kilby prison is located, but also all real
15 property owned by the state used in connection with Kilby
16 prison and adjacent thereto, all located in sections 2, 3, 10,
17 11, 21, 22, 26, 27, 28, 29, 30, 33, 34, and 35 in township 17,
18 range 18 in Montgomery County, Alabama, together with all
19 personal property owned by the state and used in connection
20 with Kilby prison and the real property adjacent thereto.

21 "~~(8)~~ (9) PERRY COUNTY FACILITY. The Perry County
22 Correctional Center, including all real property, buildings,
23 and improvements located at the facility in Perry County.

24 "(10) SPECIALIZED MEN'S PRISON FACILITY. A prison
25 facility, including all real property, buildings, and
26 improvements, designed to house at least 4,000 male inmates,
27 with intake capability, and with designated space for enhanced

1 medical, mental health, and other health care, substance abuse
2 and addiction treatment, and educational and other programming
3 services to inmates, to be located on land owned by the state
4 or the authority as of December 1, 2020, in Elmore County, as
5 provided in Section 14-2-12(c) (2)a.

6 "(11) WOMEN'S PRISON FACILITY. A prison facility
7 designed to house at least 1,000 female inmates to be located
8 on land owned by the state or the authority in Elmore County,
9 as provided in Section 14-2-12(c) (2)a.

10 "§14-2-6.

11 "(a) ~~The applicants named in the application and~~
12 ~~their respective successors in office shall constitute the~~
13 ~~members of the authority.~~ The membership of the authority
14 shall be as follows: The Governor shall be the president of
15 the authority, the Commissioner of Corrections shall be the
16 ~~vice-president~~ vice president of the authority, and the
17 Director of Finance shall be the secretary of the authority.
18 In addition to these three members, the Chair of the House
19 Ways and Means General Fund Committee, the Chair of the Senate
20 Finance and Taxation General Fund Committee, a member jointly
21 appointed by the House Minority Leader and the Senate Minority
22 Leader, and the Director of the Bureau of Pardons and Paroles
23 shall be members of the authority. The governing documents of
24 the authority shall be amended to reflect this membership.

25 "(b) The State Treasurer shall be the treasurer and
26 custodian of the funds of the authority, but shall not be a
27 member of the authority. ~~The members of the authority shall~~

1 ~~constitute all the members of the board of directors of the~~
2 ~~authority, which shall be the governing body of the authority.~~

3 "(c) A majority of the members of the ~~said board of~~
4 ~~directors~~ authority shall constitute a quorum for the
5 transaction of business.

6 "(d) Should any person holding any state office
7 named in this section cease to hold such office by reason of
8 death, resignation, expiration of his or her term of office,
9 or for any other reason, then his or her successor in office
10 shall take his or her place as a member, or officer ~~or~~
11 ~~director~~, as the case may be, of the authority.

12 "(e) No member, or officer ~~or director~~ of the
13 authority shall draw any salary in addition to that now
14 authorized by law for any service he or she may render or for
15 any duty he or she may perform in connection with the
16 authority.

17 "(f) No member, officer, ~~director~~ or employee of the
18 authority shall be personally liable for any debt, obligation,
19 or liability of the authority.

20 "(g) The authority may delegate any of its
21 administrative or reporting duties and obligations under this
22 chapter to the Department of Corrections or any other state
23 agency, department, or other state entity.

24 "§14-2-12.

25 "(a) For the purpose of providing funds for the
26 acquisition of sites, for the construction, reconstruction,
27 alteration, and improvement of facilities, for the procurement

1 and installation of equipment therefor, and for payment of
2 obligations incurred and the principal of and interest on any
3 temporary loans made for any of the ~~said~~ purposes, the
4 authority is hereby authorized, from time to time, to sell and
5 issue, in addition to all bonds heretofore authorized to be
6 issued by the authority, its bonds in such aggregate principal
7 amounts as may be determined by the corporation to be
8 necessary for the ~~said~~ purposes, but not to exceed
9 \$25,000,000, plus an additional seven million five hundred
10 thousand dollars (\$7,500,000) pursuant to Act 97-950, in
11 aggregate principal amount.

12 "(b) In addition to the authorization provided in
13 subsection (a), the authority is hereby authorized, from time
14 to time, to sell and issue its bonds in amounts determined by
15 the authority to be necessary for the acquisition,
16 construction, reconstruction, alteration, and improvement of
17 facilities. Additional bonds may be issued to provide for
18 additional bedspace by improving properties currently owned by
19 the Department of Corrections or the authority. The total
20 additional bonds authorized by this subsection shall not
21 exceed \$60 million.

22 "(c) (1) Subject to subdivision (2), in addition to
23 any other authorization provided in this chapter, the
24 authority is hereby authorized, from time to time, to sell and
25 issue bonds in multiple series and in amounts determined by
26 the authority to be necessary to replace existing bed space in
27 Department of Corrections facilities through the

1 implementation of the phased plan set forth in the act
2 amending this section. The total additional bonds authorized
3 by the act amending this section may not exceed \$785 million.

4 "(2) The additional bonds authorized under
5 subdivision (1) shall be issued by the authority as necessary
6 for the projects specified in each phase:

7 "a.1. PHASE 1: Immediately upon the effective date
8 of the act adding this amendatory language, the authority
9 shall be authorized to issue bonds as necessary, and subject
10 to the limitation in this subsection, to fund the following
11 Phase 1 projects:

12 "(i) The construction of the specialized men's
13 prison facility.

14 "(ii) The construction of the Escambia men's prison
15 facility.

16 "2. Within one year from the completion of the
17 specialized men's prison facility and the Escambia men's
18 prison facility, the Hamilton Aged and Infirm Center and the
19 Staton, Elmore, and Kilby facilities shall all be closed.

20 "3. At a time to be determined by the Department of
21 Corrections, and following the closure of the facilities
22 described in paragraph 2., the next major Department of
23 Corrections facility to be closed shall be the St. Clair
24 Correctional Facility.

25 "b. PHASE 2: Upon substantial completion of at least
26 60 percent of the construction of Phase 1 projects, in the
27 aggregate, or anytime thereafter, as certified by the

1 Commissioner of Corrections, and upon certification by the
2 Director of Finance, the chair of the House Ways and Means
3 General Fund Committee, and the chair of the Senate Finance
4 and Taxation General Fund Committee that the General Fund can
5 support additional lease payments from the department to the
6 authority or that the funding otherwise exists to complete any
7 of the Phase II projects and it is in the best interest of the
8 state to do so, the authority shall be authorized to issue
9 bonds as necessary, and subject to the limitation in this
10 subsection, to fund any of the following Phase 2 projects:

11 "1. The construction of a women's prison facility.
12 Within one year of completion of this women's facility, the
13 Julia Tutwiler Prison shall be closed.

14 "2. The renovation and improvement, or, if
15 necessary, the demolition and reconstruction, of existing
16 state-owned prison facilities in Jefferson and Limestone
17 Counties.

18 "3. The renovation and improvement, or, if
19 necessary, the demolition and reconstruction, of an existing
20 state-owned men's prison facility to be selected by the
21 authority and to be located in Barbour or Bullock County.

22 "c. PHASE 3: Prior to substantial completion of 75
23 percent of the renovation and improvement of Phase 2 projects,
24 in the aggregate, as certified by the Commissioner of
25 Corrections, the Department of Corrections, in consultation
26 with the Joint Legislative Prison Oversight Committee, shall
27 perform an evaluation of men's prison facilities based on a

1 current facilities assessment and inmate population trends to
2 determine if additional facility beds need to be replaced. A
3 copy of the evaluation shall be provided to the Legislature.

4 "(3) If bond proceeds exceed the amount authorized
5 in subdivision (1) due to receipt of original issue premium in
6 connection with the sale of bonds or due to any other reason,
7 the bond proceeds in excess of those amounts shall be
8 allocated by the authority for the expense of issuance,
9 including capitalized interest, or as determined necessary for
10 the purposes provided in subdivision (1).

11 "(4) Within 30 days of the completion of any bond
12 sale pursuant to this subsection, the authority shall provide
13 a report, in concise, simple language to the Legislature which
14 reflects the date of the issuance of the bonds pursuant to
15 this subsection, total amount of the bonds, maturity date,
16 schedule of payments, including interest and principal, amount
17 of attorney fees, architect fees and bond attorney fees,
18 underwriting fees, and all other costs incurred in the
19 issuance of and sale of the bonds herein authorized, and to
20 what person, firm, corporation, company, or other entity to
21 which any such fees or money is to be or has been paid.

22 ~~"(c)~~ (d) Any monetary transactions by the authority
23 completed pursuant to Act 2010-729 and the act adding this
24 amendatory language shall be fully disclosed to the public.

25 ~~"(d)~~ (e) Any bonds issued pursuant to this section
26 shall be sold by competitive bid if practical and economically

1 ~~feasible as determined by the authority pursuant to the terms~~
2 ~~of Section 14-2-16.~~

3 ~~"(e) (f) (1)~~ The authority is strongly encouraged to
4 utilize businesses and companies in all aspects of the bond
5 ~~and construction~~ portions of this chapter that reflect the
6 racial and ethnic diversity of the state.

7 "(2) It is the intent of the Legislature that the
8 authority encourage participation by minority businesses in
9 the construction of prison facilities as provided by the act
10 adding this amendatory language. Accordingly, the authority
11 shall adopt a plan that achieves to the greatest extent
12 possible a level of participation by minority businesses, with
13 a focus on ethnic minority businesses, including prevailing
14 ethnic minority businesses. The authority shall administer
15 training programs and other educational activities to enable
16 eligible minority businesses to compete for participation on
17 an equal basis, and shall focus on developing ethnic minority
18 businesses, including prevailing ethnic minority businesses.
19 The authority shall monitor the results of minority business
20 participation and shall report at least on a quarterly basis
21 the results of minority business participation, with
22 specificity, to the Governor, the President Pro Tempore of the
23 Senate, the Speaker of the House of Representatives, the
24 Senate Minority Leader, and the House Minority Leader.

25 "§14-2-13.1.

26 "It is hereby further provided that no refunding
27 bonds as provided for by Section 14-2-13 shall be issued

1 unless the present value of all debt service on the refunding
2 bonds (computed with a discount rate equal to the ~~true~~
3 ~~interest rate~~ bond yield of the refunding bonds and taking
4 into account all underwriting discount and other issuance
5 expenses) shall not be greater than ~~95%~~ 98 percent of the
6 present value of all debt service on the bonds to be refunded
7 (computed using the same discount rate and taking into account
8 the underwriting discount and other issuance expenses
9 originally applicable to such bonds) determined as if such
10 bonds to be refunded were paid and retired in accordance with
11 the schedule of maturities (considering mandatory redemption
12 as a scheduled maturity) provided at the time of their
13 issuance. Provided further that the average maturity of the
14 refunding bonds, as measured from the date of issuance of such
15 refunding bonds, shall not exceed by more than three years the
16 average maturity of the bonds to be refunded, as also measured
17 from such date of issuance, with the average maturity of any
18 principal amount of bonds to be determined by multiplying the
19 principal of each maturity by the number of years (including
20 any fractional part of a year) intervening between such date
21 of issuance and each such maturity, taking the sum of all such
22 products, and then dividing such sum by the aggregate
23 principal amount of bonds for which the average maturity is to
24 be determined.

25 "§14-2-14.

26 "Any bonds of the authority may be executed and
27 delivered by it at any time and from time to time, shall be in

1 such form and denominations and of such tenor and maturities,
2 shall bear such rate or rates of interest payable and
3 evidenced in such manner, may contain provisions for
4 redemption prior to maturity and may contain other provisions
5 not inconsistent with this section, all as may be provided by
6 the resolution of the ~~board of directors~~ authority whereunder
7 such bonds are authorized to be issued; provided, that no bond
8 of the authority shall have a specified maturity date later
9 than ~~20~~ 30 years after its date. ~~In the event that the~~
10 ~~authority shall make more than one pledge of the same~~
11 ~~revenues, such pledges shall, unless otherwise provided in the~~
12 ~~resolution or resolutions authorizing the earlier issued~~
13 ~~bonds, take precedence in the order of the adoption of the~~
14 ~~resolutions in which the pledges are made; provided, that each~~
15 ~~pledge for the benefit of refunding bonds shall have the same~~
16 ~~priority as the pledge for the benefit of the bonds refunded~~
17 ~~thereby.~~

18 "§14-2-16.

19 "Bonds of the authority may be sold at such price or
20 prices and at such time or times as the ~~board of directors of~~
21 ~~the~~ authority may consider advantageous, ~~either~~ at public
22 sale, or private sale, or via negotiation. Bonds of the
23 authority sold by competitive bid must be sold, whether on
24 sealed bids or at public auction, to the bidder whose bid
25 reflects the lowest ~~effective borrowing~~ true interest cost to
26 the authority for the bonds being sold; provided, that if no
27 bid acceptable to the authority is received, it may reject all

1 bids. ~~Notice of each such sale by competitive bids shall be~~
2 ~~given by publication in either a financial journal or a~~
3 ~~financial newspaper published in the City of New York, New~~
4 ~~York, and also by publication in a newspaper published in the~~
5 ~~State of Alabama, each of which notices must be published at~~
6 ~~least one time not less than 10 days before the date for the~~
7 ~~sale.~~ The ~~board of directors~~ authority may fix the terms and
8 conditions under which such sale may be held; provided, that
9 such terms and conditions shall not conflict with any of the
10 requirements of this chapter. The authority may pay out of the
11 proceeds of the sale of its bonds all expenses, including
12 capitalized interest during a period not to exceed ~~one year~~
13 three years from the date of issuance of such bonds,
14 publication and printing charges, attorneys' fees and other
15 expenses which ~~said board of directors~~ the authority may deem
16 necessary and advantageous in connection with the
17 authorization, advertisement, sale, execution, and issuance of
18 such bonds. ~~Neither~~ Except as otherwise provided in paragraphs
19 (c) (2)b. and c. of Section 14-2-12, neither a public hearing
20 nor consent of the State Department of Finance or any other
21 department or agency of the state shall be a prerequisite to
22 the issuance or sale of bonds by the authority.

23 "§14-2-19.

24 "(a) All proceeds derived from the sale of any
25 bonds, except refunding bonds, sold by the authority,
26 remaining after payment of the expenses of issuance thereof,
27 shall be turned over to the State Treasurer, shall be carried

1 in a special account to the credit of the authority, and shall
2 be subject to be drawn on by the authority solely for the
3 purposes of:

4 "(1) Acquiring land for and constructing,
5 reconstructing, and equipping thereon one or more facilities;

6 "(2) Constructing additional improvements on
7 property currently owned by the Department of Corrections or
8 the authority in order to provide for additional or
9 replacement bedspace;

10 "(3) Paying all reasonable and necessary expenses
11 incidental thereto, including filing, recording, surveying,
12 legal and engineering fees, and expenses;

13 "(4) Paying the interest which will accrue on the
14 ~~said~~ bonds during the period required for the construction and
15 ~~equipment~~ equipping of the ~~said~~ facilities and for a period
16 not exceeding six months after the completion thereof; ~~and~~

17 "(5) Paying the principal of and interest on all
18 then outstanding notes theretofore issued by the authority
19 pursuant to the provisions of Section 14-2-10~~7~~;

20 "(6) Paying for the cost of constructing the
21 specialized men's prison facility and the Escambia men's
22 prison facility; and

23 "(7) Paying for the cost of renovation and
24 improvement of existing state-owned prison facilities in
25 Jefferson and Limestone Counties and an additional men's
26 prison facility selected by the authority and to be located in

1 Barbour or Bullock County, and the construction of a women's
2 prison facility.

3 "The balance of the ~~said~~ proceeds thereafter
4 remaining, unless required for the construction of other
5 facilities by the authority as shall be determined by
6 resolution ~~of its board of directors~~ within six months after
7 completion of the facilities for which the bonds were issued,
8 shall be set aside as additional security for the bonds or
9 shall be used to pay, purchase, or redeem bonds as may be
10 provided in the proceedings authorizing their issuance. The
11 reasonable and necessary expenses incident to the construction
12 of any facility shall, if deemed advisable by the authority,
13 include all or any part of the expense of providing temporary
14 facilities, during the construction of a new facility, for any
15 penal or correctional institution facility which is demolished
16 or ~~rendered~~ unserviceable as such.

17 "(b) All proceeds from the sale of refunding bonds
18 issued by the authority that remain after paying the expenses
19 of their issuance may be used only for the purpose of
20 refunding the principal of and any unpaid and accrued interest
21 on the outstanding bonds of the authority for the refunding of
22 which the refunding bonds are authorized to be issued,
23 together with any premium that may be necessary to be paid in
24 order to redeem or retire such outstanding bonds.

25 "§14-2-21.

1 "(a) The principal of, premium, if any, and interest
2 on the bonds of the authority shall be secured by any or all
3 of the following, as the authority may determine:

4 "(1) The rent and revenue for the use of one or more
5 facilities of the authority;

6 "(2) The net rent or sale proceeds from the Kilby
7 property;

8 "(3) Any bond proceeds remaining unexpended upon
9 completion of all facilities to be constructed with such bond
10 proceeds and the payment of the cost thereof;

11 "(4) Any insurance proceeds which the authority may
12 receive by reason of its ownership of any of the facilities;
13 and

14 "(5) Any mortgage upon or security interest in one
15 or more facilities of the authority, granted in connection
16 with the issuance of such bonds.

17 "(b) The authority shall have authority to transfer
18 and assign any lease agreement of any of the facilities and
19 any lease or mortgage of the Kilby property as security for
20 the payment of such principal, premium, if any, and interest.
21 The bonds may be issued under, and secured by, a resolution
22 which may, but need not, provide for an indenture of trust
23 covering one or more facilities of the authority. Such
24 resolution or such indenture of trust may contain any
25 provision or agreement customarily contained in instruments
26 securing evidences of indebtedness, including, without
27 limiting the generality of the foregoing, provisions

1 respecting the collection and application of any lease
2 agreement revenues, or other receipts pledged to the payment
3 of bonds, the terms to be incorporated in lease agreements
4 respecting the facilities, the maintenance and insurance
5 thereof, the creation and maintenance of reserve and other
6 special funds from such receipts, and the rights and remedies
7 available in the event of default to the holders of the bonds
8 or to the trustee for the holders of the bonds or under any
9 indenture of trust, all as the authority may deem advisable
10 and as shall not be in conflict with the provisions of this
11 chapter; provided, however, that in making such agreements or
12 provisions the authority shall not have the power to obligate
13 itself except with respect to its facilities, the Kilby
14 property, and the application of the lease agreement revenues
15 and other receipts which it is authorized in this chapter to
16 pledge.

17 "(c) The Department of Corrections - Correctional
18 Capital Improvement Fund is created within the State Treasury,
19 to be administered by the Department of Corrections. The
20 Legislature shall make appropriations to this entity to be
21 used exclusively for the construction, renovation, and
22 improvement of the prison facilities as enumerated in Section
23 14-2-12(c).

24 "(d) The Correctional Facilities Maintenance Fund is
25 created within the State Treasury, to be administered by the
26 Department of Corrections. The Legislature shall make
27 appropriations to this fund to be used exclusively for

1 maintenance of the prison facilities as enumerated in Section
2 14-2-12(c).

3 "§14-2-28.

4 ~~"All facilities constructed by the authority shall~~
5 ~~be constructed according to plans and specifications of~~
6 ~~architects or engineers, or both, selected by the department.~~
7 ~~Such plans and specifications shall be approved by the~~
8 ~~department and by the commission. All work in the construction~~
9 ~~of facilities, or any part thereof, which is determined by the~~
10 ~~commission to be suitable and proper for construction by~~
11 ~~prison labor under force account shall be performed by such~~
12 ~~prison labor under such supervision and directions as shall be~~
13 ~~ordered by the department. All construction of facilities or~~
14 ~~any part thereof which the commission shall determine not to~~
15 ~~be suitable and proper for construction by prison labor shall~~
16 ~~be done under the supervision and direction of the commission~~
17 ~~following award for each part of the work to the lowest~~
18 ~~responsible bidder after advertising for, receipt and public~~
19 ~~opening of sealed bids. Each such invitation for bids and the~~
20 ~~bidding documents applicable thereto shall be so arranged that~~
21 ~~any alternates shall constitute cumulative deductions from the~~
22 ~~base bid rather than additions thereto. In determining the~~
23 ~~lowest bidder if funds are insufficient to construct the~~
24 ~~facility on the lowest base bid, then the commission may~~
25 ~~proceed to consider the bids upon the basis of the base bids~~
26 ~~of all bidders minus the respective reductions stated for the~~
27 ~~first alternate. If the lowest bid so determined is not then~~

1 ~~within the funds available, the commission shall proceed to~~
2 ~~consider the base bid minus the first and second alternates~~
3 ~~together to determine the lowest bid and in like manner~~
4 ~~throughout all alternates, if need be, so that in no event~~
5 ~~shall there be any discretion as to which alternate or~~
6 ~~alternates will be used in determining the lowest responsible~~
7 ~~bidder. If no bid deemed acceptable by the commission and the~~
8 ~~authority is received, all bids may be rejected, in which~~
9 ~~event bids may again from time to time be invited and acted on~~
10 ~~as provided in this section.~~

11 "(a) (1)a. Notwithstanding any other provision of
12 law, the contract for the design and construction of the
13 specialized men's prison facility and the Escambia men's
14 prison facility authorized in Section 14-2-12(c) (2)a. may be
15 awarded to either of the following:

16 "1. Any person that was part of a team qualified by
17 the department for any proposed facility pursuant to the
18 Request for Qualifications issued by the Department of
19 Corrections June 27, 2019, provided that the previously
20 qualified person may petition the department to add or
21 substitute members as needed.

22 "2. In the event the authority determines it is not
23 in the best interest of this state to enter into a contract
24 for the design and construction of one or both of the
25 specialized men's prison facility and the Escambia men's
26 prison facility pursuant to subparagraph (a) (1)a.1., the
27 authority may enter into contracts with any other public and

1 private parties for the design and construction of the
2 facilities not contracted for pursuant to subparagraph
3 (a)(1)a.1., including a design-build contract, in accordance
4 with the following:

5 "(i) The authority shall develop procedures to
6 implement this section, including, but not limited to,
7 proposal content, selection criteria, prequalification,
8 applicant interview, proposal evaluation, proposal
9 negotiation, selection, and award, which will be outlined in
10 each authority request for proposal.

11 "(ii) Notwithstanding any provision of law to the
12 contrary, proposals under this section shall be awarded by the
13 authority based on qualifications of participants and best
14 value as evaluated by procedures of the authority and taking
15 into consideration the best interest of this state.

16 "(iii) Proposals shall use the standard
17 specifications of the department or other specifications the
18 authority and the department determine necessary for the
19 facility.

20 "(iv) The authority may award a contract through any
21 other procurement authority, proposals, or other means of
22 procurement otherwise available for public works projects in
23 this state.

24 "b. Both the specialized men's prison facility and
25 the Escambia men's prison facility shall not be awarded to the
26 same person unless it is determined by the authority that to

1 award the contracts to the same person would be in the best
2 interest of this state.

3 "c. Unless the authority finds it is not in the best
4 interest of this state, the contract for the design and
5 construction of the specialized men's prison facility shall be
6 executed before execution of the contract for the design and
7 construction of the Escambia men's prison facility.

8 "d. Any contract for the design and construction of
9 the specialized men's prison facility or for the design and
10 construction of the Escambia men's prison facility shall
11 establish a guaranteed maximum price for each project.

12 "e. As a condition of entering into a contract for
13 the design and construction of either the specialized men's
14 prison facility or the Escambia men's prison facility, any
15 person entering into the contract shall agree to full
16 transparency and shall share all pricing information with the
17 authority. The authority, at its sole discretion, shall have
18 the right to require verification of competitive pricing for
19 any portion of the proposed scope of the design and
20 construction agreements.

21 "(2)a. Notwithstanding any other provision of law,
22 and except as provided in paragraph b., all other construction
23 contemplated by the act amending this section shall be subject
24 to the bid requirements for public works in Title 39.

25 "b. When two or more bids are received for contracts
26 referenced in paragraph a., and all bids exceed available
27 funding for the contract as provided in Section 14-2-12, the

1 authority may negotiate for the work with the lowest
2 responsible and responsive bidder provided that the authority
3 certifies a shortage of funding, that time is of the essence,
4 and that the negotiated changes are in the public interest and
5 do not materially alter the scope and nature of the project.

6 "(c) All such contracts shall be lump sum contracts.
7 The entire work on a prison facility may be divided into one
8 or more contracts. All contracts for the entire work on a
9 facility ~~shall~~ need not be awarded at the same time, ~~but~~
10 ~~notice to proceed may be withheld until~~ so that prior work
11 under another contract ~~has progressed~~ can progress to a point
12 where the joint or following work can best be coordinated for
13 the earliest completion of the entire project in a sound and
14 workmanlike manner. Each contract shall be executed by the
15 authority ~~upon the determination of the commission as to the~~
16 ~~lowest bidder.~~ Payments made by the authority under the
17 construction contracts shall be upon the contractor's written
18 sworn request only if endorsed as approved by the commission
19 or in any lesser amount the commission shall endorse as having
20 been then earned on ~~said~~ the contract. After the contracts for
21 a facility have been awarded, ~~such~~ the construction cost
22 estimate shall be revised and all extras on the contracts
23 shall be awarded within the funds available. The authority
24 shall pay to the commission as a part of the cost of
25 constructing the facility such sums for the services of its
26 employees as may be mutually agreed between the department and
27 the commission.

1 "§14-2-34.

2 "When all bonds and securities issued by the
3 authority and all obligations assumed by it under the
4 provisions of this chapter shall have been paid in full, the
5 then president of the authority shall thereupon execute and
6 deliver in the name of, and in behalf of, the authority an
7 appropriate deed or deeds, to which the seal of the authority
8 shall be affixed and attested by the secretary of the
9 authority, conveying all facilities and other assets then
10 owned by the authority to the state, except that no such
11 conveyance shall be required if the president of the authority
12 determines that the issuance of additional bonds to finance
13 improvements to existing facilities is contemplated. The ~~then~~
14 ~~officers and directors~~ of the authority may, in their
15 discretion, at such time file with the Secretary of State a
16 written statement, subscribed and sworn to by each of them,
17 reciting the payment in full of all bonds theretofore issued
18 by the authority and the execution and delivery of such deed
19 or deeds, which statement shall be filed by the Secretary of
20 State and recorded with the certificate of incorporation of
21 the authority, and thereupon the authority shall stand
22 dissolved."

23 Section 3. (a) Separate and apart from the power
24 granted to the authority in regard to the Kilby property in
25 Sections 14-2-26 and 14-2-27, Code of Alabama 1975, and in
26 addition to those powers, the authority shall have the power
27 to sell, convey, and lease all or any part of any real and

1 personal property now or hereafter owned by it, together with
2 the improvements thereon and ancillary thereto, that is not
3 being used by the department as a facility, and the sale of
4 which will not impair the outstanding obligations of the
5 authority, and as an aid to the sale or lease, to cause to be
6 prepared by competent real estate experts a land use map and
7 plan. The authority may lease or sell lands and property owned
8 by it without going through the Lands Division or in any other
9 way complying with the provisions of Title 9, Chapter 15,
10 Article 3, Code of Alabama 1975. The authority must have duly
11 adopted written policies and procedures governing the sale or
12 lease of the property which invoke open competition and
13 produce the best price, to include obtaining an appraisal,
14 advertising the sale or lease, and conducting the sale by
15 public auction or publicly sought sealed bid. The sale or
16 lease shall be made at public sale or private sale as the
17 authority shall determine to be necessary or desirable.

18 (b) The award of any property offered for public
19 sale or lease shall be made to the highest responsible bidder
20 unless all bids shall be rejected as inadequate and other
21 public offering shall be made upon notice republished as
22 prescribed above. Any sale shall be for all cash. Each deed or
23 lease to effectuate any sale or lease shall be signed in the
24 name of the authority by its president, to which the seal of
25 the authority shall be affixed and attested by its secretary.

26 (c) The proceeds of each sale or lease of any such
27 property shall be used first to pay the reasonable and

1 necessary expenses of the sale or lease, and the balance
2 remaining shall be deposited into the Correctional Facilities
3 Maintenance Fund.

4 (d) The department shall maintain all facilities not
5 being used for the purposes designated in Section 14-2-1(7),
6 Code of Alabama 1975, and designated for sale, lease,
7 demolition, or other disposition, so long as title thereto is
8 held by the authority, to enable the authority to achieve the
9 best possible price or other result upon the sale, lease, or
10 other disposition thereof.

11 (e) Upon request of the authority, the department
12 shall convey to the authority any real and personal property
13 to which the department holds title and acquired with proceeds
14 of the authority's bonds or income thereon.

15 Section 4. The state, through any of its departments
16 or agencies or a subdivision thereof, shall lease or purchase
17 upon commercially reasonable terms, or a combination thereof,
18 the existing prison facility in Perry County to be utilized by
19 the department or any other state department or agency using
20 funds appropriated for that purpose from the State General
21 Fund.

22 Section 5. A person or entity submitting a proposal
23 for any project under this act shall disclose both of the
24 following:

25 (1) The names of all lobbyists, attorneys, or other
26 professionals or professional firms hired or retained by the
27 person or entity on or after December 6, 2019.

1 (2) The names of all current or past elected
2 officials or family members as defined in Section 36-25-1(15),
3 Code of Alabama 1975, associated in any manner with the person
4 or entity submitting the proposal or associated in any manner
5 with a subcontractor of the person or entity on or after
6 December 6, 2019.

7 Section 6. Nothing in this act shall be construed to
8 limit the department from continuing to use third party or
9 private facilities for any program or housing of inmates that
10 are not under medium, maximum, or close security supervision.

11 Section 7. (a) Prior to the closure of any facility
12 as the result of the provisions of this act, there shall be
13 established a commission to study the economic impact of the
14 closure of the facility, any possible repurposing of the
15 facility, and any outstanding obligations of the facility to a
16 local governmental entity or utility board. The commission
17 shall report its findings to the Governor, the President Pro
18 Tempore of the Senate, the Speaker of the House of
19 Representatives, the Senate Minority Leader, and the House
20 Minority Leader.

21 (b) The Alabama Prison Repurposing Commission,
22 created by Executive Order No. 722, September 22, 2020, is
23 deemed to satisfy the requirements of subsection (a) for as
24 long as the commission exists.

25 Section 8. The provisions of this act are severable.
26 If any part of this act is declared invalid or

1 unconstitutional, that declaration shall not affect the part
2 which remains.

3 Section 9. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.

1
2
3

4
5
6
7
8
9
10
11
12
13
14

15
16
17
18

House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Ways and Means
General Fund..... 27-SEP-21

Read for the second time and placed
on the calendar..... 28-SEP-21

Read for the third time and passed
as amended..... 29-SEP-21
Yeas 74, Nays 27, Abstains 0

Jeff Woodard
Clerk