

1 HB613  
2 117454-5  
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

1  
2 ENROLLED, An Act,

3           Relating to Jefferson County; to provide certain  
4 notice, hearing, and disclosure requirements for certain debt  
5 issued by the county and for certain swap agreements entered  
6 into by the county; to require a public hearing before the  
7 county enters into a binding agreement to issue debt or a  
8 binding swap agreement and to specify the timing of the  
9 hearing; to require the county to publish notice of the public  
10 hearing and to specify the required content and timing of the  
11 notice; to require competitive bidding of certain swap  
12 agreements; to specify the procedure for and requirements for  
13 bidding; to require the county file a written report of  
14 certain agreements in the public records of the county; to  
15 specify the required content and timing of the written report;  
16 to prohibit the county from making a payment to any  
17 individual, business, or professional organization before  
18 issuing payment; to require the county to obtain a written  
19 statement from the individual, business, or professional  
20 organization declaring certain information regarding the  
21 amount and purpose of the payment; and to require the written  
22 statement to be filed in the public records of the county.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24           Section 1. Application.

25           This act shall apply to both of the following:

1           (1) Any debt issued by Jefferson County if the  
2 amount of the debt to be issued in a single transaction, or in  
3 a series of related transactions, exceeds five million dollars  
4 (\$5,000,000).

5           (2) Any swap agreement entered into by Jefferson  
6 County.

7           Section 2. Definitions.

8           For purposes of this act, the following terms have  
9 the following meanings:

10           (1) COUNTY. Jefferson County, Alabama.

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

14           (3) OFFICIAL STATEMENT. An official statement,  
15 offering memorandum, placement memorandum, or a similar  
16 document prepared for distribution to investors or purchasers  
17 of debt. A preliminary official statement refers to an  
18 official statement prepared for distribution to prospective  
19 investors or purchasers, and a final official statement refers  
20 to an official statement prepared for distribution after the  
21 final terms of issuance have been determined.

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

24           (5) SWAP AGREEMENT. a. Any interest rate swap  
25 agreement, interest rate cap agreement, interest rate floor

1 agreement, interest rate collar agreement, or any other  
2 similar agreement, including any option to enter into any of  
3 the foregoing; or b. Any agreement subject to Article 3 of  
4 Chapter 1 of Article 41 of the Code of Alabama 1975.

5 Section 3. Notice and hearing.

6 (a) The county may not issue debt unless it gives  
7 notice of the proposed debt issuance as provided in subsection  
8 (b) and a hearing is held as provided in Section 4. The county  
9 may not enter into a swap agreement unless notice of the  
10 proposed swap agreement is given as provided in subsection ~~(c)~~  
11 (d), a hearing is held as provided in Section 4, and  
12 competitive bids for the swap agreement are requested as  
13 provided in Section 5.

14 (b) The county shall provide notice of a public  
15 hearing on the proposed issuance of debt. The notice shall be  
16 published in a newspaper of general circulation in the county  
17 not less than four days before the public hearing and shall  
18 include a brief description of all of the following  
19 information with respect to the proposed debt:

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

23 (2) The interest rate or rates on the debt, if  
24 established as of the date of the notice, or, if not

1 established as of such date, the terms and procedures by which  
2 the interest rates will be established.

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

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

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

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

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

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

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

19 (10) If the debt will be purchased by one or more  
20 banks or other lenders in a direct placement of the debt, the  
21 expected identity of each purchaser of the debt and each  
22 placement agent.

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

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

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

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

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

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

1 available to potential investors in debt related to the swap  
 2 agreement and the preliminary official statement will be  
 3 available not less than three days before the public hearing,  
 4 the notice may adopt by reference information included in the  
 5 preliminary official statement.

6 Section 4. Public hearing.

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

19 Section 5. Public bidding of swap agreements.

20 The county shall competitively bid all swap  
 21 agreements using the following procedures:

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



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

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

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

3           1. Authorize an official of the county to establish  
4 a deadline date and time for receipt of proposals for a swap  
5 agreement.

6           2. Authorize the execution and delivery of all  
7 documents required to complete the swap transaction.

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

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

12          b. Determination of the best bid complying with the  
13 bid limit shall be made immediately after the deadline for  
14 submission of bid numbers, and the authorized official shall  
15 then execute and deliver the swap documents.

16          c. All bid numbers received shall be publicly  
17 announced.

18          d. The county may reject all bids.

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

22          Section 6. Information filing by county.

23          (a) Not less than seven days after the county enters  
24 into a binding agreement for the issuance of debt or enters  
25 into a binding swap agreement, it shall file a report in the

1 public records of the county. The report shall include all of  
2 the following:

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

6 (2) A description of any variation in the expected  
7 facts and circumstances described in the related notice of the  
8 public hearing, or the related preliminary official statement,  
9 and the final terms of the debt or the swap agreement, and the  
10 reason for such variation.

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

16 (b) If the information required in the report  
17 delivered pursuant to subsection (a) is included in a final  
18 official statement prepared in connection with the debt, or  
19 the debt related to the swap agreement, the report may adopt  
20 by reference the information in the final official statement.

21 Section 7. Statements under oath by third parties.

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

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

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

5           (3) The amount and purpose of any payment to a third  
6 party.

7           (b) Each statement obtained by the county shall be  
8 filed in the public records of the county. The county may not  
9 enter into any swap agreement unless the county obtains a  
10 written statement under oath by the person identifying any  
11 third person to whom the payment was made and the amount paid  
12 to the person.

13           Section 8. The provisions of this act are severable.  
14 If any part of this act is declared invalid or  
15 unconstitutional, that declaration shall not affect the part  
16 which remains.

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

20           Section 10. This act shall become effective  
21 ~~immediately~~ 30 days following its passage and approval by the  
22 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 04-MAR-10.

Greg Pappas  
Clerk

Senate	13-APR-10	Amended and Passed
House	13-APR-10	Concurred in Senate Amendment