

1 SB192
2 147770-7
3 By Senators Bussman, Allen, Reed, Pittman, Fielding, Williams,
4 McGill, Glover, Scofield, Brewbaker, Taylor, Keahey, Figures,
5 Coleman and Dunn
6 RFD: Commerce, Transportation, and Utilities
7 First Read: 12-FEB-13

1 SB192

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4 ENROLLED, An Act,

5 To amend Sections 23-1-174, 23-1-177, 23-1-178, and
6 23-1-181 of the Code of Alabama 1975, to add the Governor as a
7 member of the corporation; to designate the officers of the
8 corporation; to allow the borrowing authority of the
9 corporation to be not more than \$25 million in aggregate
10 principal amount of bonds of the corporation outstanding at
11 any time for the purpose of financing the state's share of the
12 cost of constructing roads, bridges, and related improvements;
13 and to provide matching funds otherwise to be paid by counties
14 or municipalities for local roadway, bridge, and related
15 improvement projects awarded through the Rural Assistance
16 Match Program and administered by the Alabama Department of
17 Transportation.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

22 "§23-1-174.

23 "The ~~applicants named in the application and their~~
24 ~~respective successors in office shall constitute the~~ members
25 of the corporation shall consist of the Governor, the Director

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

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

3 "§23-1-177.

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

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

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

24 "~~(d) Bonds of the corporation must be sold only at~~
25 ~~public sale, either on sealed bids or at public auction at, to~~

1 ~~the bidder whose bid reflects the lowest net interest cost to~~
2 ~~the corporation for the bonds being sold, computed to their~~
3 ~~relative maturities; provided, that if no bid acceptable to~~
4 ~~the corporation is received it may reject all bids. Notice of~~
5 ~~each such sale shall be given by publication in either a~~
6 ~~financial journal or a financial newspaper published in the~~
7 ~~City of New York, New York and also by publication in a~~
8 ~~newspaper published in the State of Alabama that is~~
9 ~~customarily published not less often than five days during~~
10 ~~each calendar week, each of which notices must be published at~~
11 ~~least one time not less than 10 days prior to the date fixed~~
12 ~~for the sale. The board of directors may fix the terms and~~
13 ~~conditions under which each such sale may be held; provided,~~
14 ~~that none of the bonds may be sold for a price less than the~~
15 ~~face value thereof; and provided, further, that such terms and~~
16 ~~conditions shall not conflict with any of the requirements of~~
17 ~~this article. Bonds of the corporation may be sold at private~~
18 ~~sale or public sale, but if at public sale, only to the bidder~~
19 ~~whose bid reflects the lowest net interest cost to the~~
20 ~~corporation for the bonds being sold, computed to their~~
21 ~~relative maturities, in such manner and at such price or~~
22 ~~prices and at such time or times as may be determined by the~~
23 ~~board of directors to be most advantageous.~~

24 "(e) Subject to the provisions and limitations
25 contained in this article, the corporation may from time to

1 time sell and issue refunding bonds in aggregate principal
2 amounts that may exceed the principal amount of bonds being
3 refunded for the purpose of refunding any matured or unmatured
4 bonds of the corporation ~~then outstanding~~. Approval by the
5 Governor of Alabama of the terms and conditions under which
6 any refunding bonds of the corporation may be issued shall be
7 requisite to their validity. Such approval shall be entered on
8 the minutes of the meetings of the board of directors at which
9 the refunding bonds are authorized and shall be signed by the
10 Governor. ~~Such approval by the Governor may be shown on any~~
11 ~~such bonds by a facsimile of his signature printed or~~
12 ~~otherwise reproduced thereon when authorization thereof is~~
13 ~~contained in the said approval signed by him.~~

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

1 and empowered to pledge for payment of such principal and
2 interest the funds that are appropriated and pledged by act of
3 the Legislature for payment of ~~said~~ the principal and
4 interest, or such funds or revenues as are herein permitted to
5 be used for payment of the principal and interest.

6 "(g) All contracts made and all bonds issued by the
7 corporation pursuant to the provisions of this article shall
8 be solely and exclusively obligations of the corporation and
9 shall not be an obligation or debt of any kind of the State of
10 Alabama. Bonds issued by the corporation when not registered
11 shall be construed to be negotiable instruments although
12 payable solely from a specified source as provided in this
13 article. All bonds issued by the corporation and the income
14 therefrom shall be exempt from all taxation in the State of
15 Alabama. Any bonds issued by the corporation may be used by
16 the holder thereof as security for any funds belonging to the
17 state or to any instrumentality or agency of the state in any
18 instance where security for such deposits may be required by
19 law.

20 "(h) Unless otherwise directed by the court having
21 jurisdiction thereof or by the document that is the source of
22 authority, a trustee, executor, administrator, guardian, or
23 one acting in any other fiduciary capacity may, in addition to
24 any other investment powers conferred by law and with the

1 exercise of reasonable business prudence, invest trust and
2 other fiduciary funds in bonds of the corporation.

3 "(i) Neither a public hearing nor consent by the
4 state Department of Finance or any other department or agency
5 shall be a prerequisite to the issuance of bonds by the
6 corporation. All obligations issued by the corporation shall
7 be exempt from the laws of the state governing usury or
8 prescribing or limiting interest rates including but without
9 limitation to the provisions of Chapter 8 of Title 8, as it
10 now exists and as it may at any time be amended.

11 "§23-1-178.

12 "(a) The proceeds of all bonds, other than refunding
13 bonds, issued by the corporation remaining after paying the
14 expenses of their issuance shall be ~~turned in to~~ deposited in
15 the State Treasury and credited to the Road and Bridge Fund,
16 ~~shall be carried in the Public Road and Bridge Account~~ and
17 shall be subject to be drawn on by the corporation, upon the
18 approval of the State Department of Transportation ~~and the~~
19 ~~Governor~~, but solely for the purpose of constructing,
20 reconstructing ~~and, or~~ relocating public roads and bridges, or
21 work incidental or related thereto, including the acquisition
22 of property necessary therefor, in the State of Alabama;
23 provided, that such funds may be used only for payment of the
24 state's share or the costs thereof to be paid by any county or
25 municipality within the state, of the cost of constructing,

1 reconstructing and, or relocating public roads and bridges, or
2 work incidental or related thereto, which have been or will be
3 constructed, reconstructed, or relocated under programs
4 financed jointly by the state and the federal government; and
5 provided further, that if such action shall be necessary in
6 order to comply with any federal legislation relating to
7 federal aid in construction of roads, the corporation may
8 authorize the State Department of Transportation to expend
9 directly any portion of such proceeds for constructing,
10 reconstructing and, or relocating such roads and bridges, or
11 work incidental or related thereto. The proceeds from the sale
12 of any refunding bonds of the corporation remaining after
13 paying the expenses of their issuance shall be used only for
14 the purpose of refunding the principal of outstanding bonds of
15 the corporation and of paying any premium that may be
16 necessary to be paid in order to redeem or retire the bonds to
17 be refunded.

18 "(b) Proceeds from the sale of any bonds may be
19 invested in permitted investments pending their disposition.
20 Permitted investment as used in this section shall mean: (i)
21 any bonds or other obligations which as to principal and
22 interest constitute direct obligations of, or are
23 unconditionally guaranteed by, the United States of America,
24 including obligations of any federal agency to the extent such
25 obligations are unconditionally guaranteed by the United

1 States of America and any certificates or any other evidences
2 of an ownership interest in such obligations of, or
3 unconditionally guaranteed by, the United States of America or
4 in specified portions thereof, which may consist of the
5 principal thereof or the interest thereon; (ii) bonds,
6 debentures, notes, or other evidences of indebtedness issued
7 by any of the following agencies: Bank for Cooperatives;
8 Federal Intermediate Credit Banks; Federal Financing Bank;
9 Federal Home Loan Banks; Federal Farm Credit Bank;
10 Export-Import Bank of the United States; Federal Land Banks;
11 or Farmers Home Administration or any other agency or
12 corporation which has been or may hereafter be created by or
13 pursuant to an act of the Congress of the United States as an
14 agency or instrumentality thereof; (iii) bonds, notes, pass
15 through securities, or other evidences of indebtedness of
16 Government National Mortgage Association and participation
17 certificates of Federal Home Loan Mortgage Corporation; (iv)
18 the full faith and credit obligations of any state, provided
19 that at the time of purchase such obligations are rated at
20 least "AA" by Standard & Poor's Ratings Group, "Aa" by Moody's
21 Investors Service, or "AA" by Fitch IBCA, Inc.; (v) public
22 housing bonds issued by public agencies or municipalities and
23 fully secured as to the payment of both principal and interest
24 by contracts with the United States of America, or temporary
25 notes, preliminary notes or project notes issued by public

1 agencies or municipalities, in each case fully secured as to
2 the payment to both principal and interest by a requisition or
3 payment agreement with the United States of America; (vi) time
4 deposits evidenced by certificates of deposit issued by banks
5 or savings and loan associations which are members of the
6 Federal Deposit Insurance Corporation, provided that, to the
7 extent such time deposits are not covered by federal deposit
8 insurance, such time deposits, including interest thereon, are
9 fully secured by a pledge of obligations described in clauses
10 (i), (ii), (iii), and (v) above, which at all times have a
11 market value not less than the amount of such bank time
12 deposits required to be so secured and which meet the greater
13 of 100 percent collateralization or the "AA" collateral levels
14 established by Standard & Poor's Ratings Group for structured
15 financings; (vii) repurchase agreements for obligations of the
16 type specified in clauses (i), (ii), (iii), and (v) above,
17 provided such repurchase agreements are fully collateralized
18 and secured by such obligations which have a market value at
19 least equal to the purchase price of such repurchase
20 agreements which are held by a depository satisfactory to the
21 State Treasurer in such manner as may be required to provide a
22 perfected security interest in such obligations, and which
23 meet the greater of 100 percent collateralization or the "AA"
24 collateral levels established by Standard & Poor's Ratings
25 Group for structured financings; and (viii) uncollateralized

1 investment agreements with, or certificates of deposit issued
2 by, banks or bank holding companies, the senior long-term
3 securities of which are rated at least "AA" by Standard &
4 Poor's Ratings Group and at least "Aa" by Moody's Investors
5 Service.

6 "§23-1-181.

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

9 "(1) BONDS. Such term, without qualifying words or
10 phrases, means bonds of the corporation issued under this
11 article.

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

13 "(3) CORPORATION. Alabama Highway Finance
14 Corporation, a public corporation and instrumentality of the
15 State of Alabama that was organized and is existing under this
16 article.

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

19 "(5) HIGHWAY GASOLINE TAX.

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

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

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

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

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

24 "(1) So much as may be necessary for such purpose of
25 those portions of the motor vehicle license taxes and

1 registration fees that are provided to be distributed to the
2 state pursuant to the provisions of Division 1 of Article 5 of
3 Chapter 12 of Title 40 as amended, remaining after the costs
4 of collection thereof;

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

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

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

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

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

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

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

1 (3) and (4), of the receipts from the fee in respect of
2 identification markers on motor vehicles that is provided for
3 in Section 40-17-150.

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

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

1 ~~refunding any of the bonds referred to in clause (1) of this~~
2 ~~sentence if, and only if, the aggregate amount of principal~~
3 ~~and interest that will mature with respect to such refunding~~
4 ~~bonds during any fiscal year of the State of Alabama does not~~
5 ~~exceed the amount of principal and interest, with respect to~~
6 ~~the bonds refunded by such refunding bonds, that have a stated~~
7 ~~maturity during the same fiscal year, or that would have had a~~
8 ~~stated maturity during the same fiscal year if such bonds had~~
9 ~~not been refunded.~~

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

1 ~~"(f) The appropriations and pledges herein made for~~
2 ~~the benefit of any bonds, other than refunding bonds, issued~~
3 ~~under this article shall be prior and superior to any~~
4 ~~appropriations and pledges for the benefit of any obligations~~
5 ~~that may at any time be issued under the provisions of Article~~
6 ~~10 of this chapter."~~

7 Section 2. All persons and entities awarded a
8 contract or employed pursuant to this act shall be inclusive
9 and reflect the geographic, gender, racial, and ethnic
10 diversity of the state.

11 Section 3. This act shall become effective
12 immediately following its passage and approval by the
13 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB192

Senate 26-FEB-13

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Amended and passed 20-MAR-13

Senate concurred in House amendment 04-APR-13

By: Senator Bussman