

1 SB202
2 197879-2
3 By Senator Orr
4 RFD: Governmental Affairs
5 First Read: 02-APR-19

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To amend Sections 11-8A-3 and 11-8A-4, Code of
12 Alabama 1975, relating to the county government bond financing
13 review form; to require the bond financing agreement documents
14 to include a schedule of all of the debt obligations of the
15 county under certain conditions; to require the chair of the
16 county commission and the authorized signatory for the bond
17 underwriter to sign an acknowledgement that the total amount
18 of debt obligations and a schedule of the total debt payments
19 have been presented and explained to the county commission; to
20 add a statement to the county government bond financing review
21 form acknowledging that the county commission has received the
22 debt service schedule under certain conditions; to require
23 that a municipality would follow the same procedures required
24 of a county before entering into a bond financing agreement
25 and would complete a government bond financing review form
26 developed by the Department of Examiners of Public Accounts;
27 and to require that the form be submitted to the Department of

1 Examiners of Public Accounts and made available for public
2 inspection.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 11-8A-3 and 11-8A-4, Code of
5 Alabama 1975, are amended to read as follows:

6 "§11-8A-3.

7 "(a) In addition to any and all other documents
8 presented for examination and execution of a bond financing
9 agreement which, for the purposes of this chapter, takes place
10 at the time a county commission makes an official award of the
11 bonds, the county commission shall execute a county government
12 bond financing review form. The standard review form shall be
13 prepared by the Department of Examiners of Public Accounts and
14 shall include statements to the effect that:

15 "(1) The county commission has considered whether it
16 can satisfy its financial obligations for the life of the
17 bonds.

18 "(2) In the case of limited obligation indebtedness,
19 the county commission has identified the source for the debt
20 service payments for the life of the bonds, and in the case of
21 general obligation indebtedness, the county commission has
22 indicated that the full faith and credit of the county has
23 been pledged for the debt service payments for the life of the
24 bonds.

25 "(3) The county commission has considered the period
26 of usefulness of the improvement or property for which the

1 bonds are to be issued in light of the duration of the term of
2 the bonds under the bond financing agreement.

3 "(4) The county commission acknowledges that bond
4 proceeds shall not be used for general operating expenses of
5 the county.

6 "(5) The county commission has received from the
7 bond underwriter, bond counsel, issuer's counsel, trustee, and
8 any others associated with the issuance of bonds an itemized
9 listing of their respective fees and all other costs which
10 shall not be subject to change prior to the sale or issuance
11 of bonds.

12 "(6) The county commission has received from the
13 bond underwriter a clear and understandable written proposal
14 explaining all details of the proposed bond issue, its
15 repayment schedule, and any external factors which could
16 affect the total cost to the county if it issues the bonds.

17 "(7) The county commission has considered the
18 effect, if any, that the bonds will have on the county's
19 constitutional debt limit.

20 "(8) The county commission has received from the
21 bond underwriter information demonstrating that the estimated
22 interest rate on the bonds is reasonable and, that if
23 information regarding similar recent issuances is available,
24 the interest rates are comparable with other similar issuances
25 based on current bond market conditions on the date of
26 execution of the bond financing agreement.

1 "(9) The county commission has received from the
2 bond underwriter a separate document of the potential debt
3 service schedule for all county debt for the time span of the
4 maturity of the debt obligation at issue and has been advised
5 of the ability of the county to pay all of the debt
6 obligations.

7 "(b) If the proceeds of the proposed bonds are to be
8 used in whole or in part for the purpose of refinancing or
9 refunding outstanding bonds, the county government bond
10 financing review form shall also include statements to the
11 effect that:

12 "(1) The county commission understands how the
13 issuance of refunding bonds may extend the county's initial
14 debt repayment period and the total cost paid by the county by
15 the end of the refunding period.

16 "(2) The county commission has considered whether
17 the refunding bonds will create net present value savings for
18 the county, including the costs of refinancing.

19 "(c) In connection with a swap agreement, the county
20 government bond financing review form shall include statements
21 to the effect that:

22 "(1) The county commission has complied with
23 paragraph a. of subdivision (2) of Section 41-1-42.

24 "(2) The county commission has reviewed or had
25 explained by the adviser selected as provided in Section
26 11-8A-5 all documentation provided pertaining to the swap
27 agreement as required in subsection (d).

1 "(3) The county commission has designated an
2 employee or official who will have primary responsibility for
3 the consideration, execution, and monitoring of interest rate
4 swaps and financial hedges entered into by the county.

5 "(4) The county commission has determined whether
6 the county's obligations under the swap agreement constitute a
7 general obligation indebtedness of the county and whether the
8 source of payment is sufficient.

9 "(5) The county commission has sought and received
10 specific information disclosing the potential risks inherent
11 in the swap agreement including those risks commonly referred
12 to in the derivatives industry as basis risk, tax risk,
13 interest rate risk, counterparty risk, termination risk,
14 market-access risk, rollover or anticipation risk, and credit
15 risk.

16 "(d) The county government bond financing review
17 form shall also include a statement acknowledging that all
18 enumerated items on the review form have been considered by
19 the county commission, and that the county commission has
20 voted to enter into the bond financing agreement or swap
21 agreement by an affirmative vote of a majority of the members
22 of the county commission. The statement of acknowledgment
23 shall be signed by the chair of the county commission or
24 another commission member designated by the county commission
25 and the adviser or consultant utilized by the county
26 commission pursuant to Section 11-8A-5.

1 "(e) A copy of the county government bond financing
2 review form shall be forwarded to the Department of Examiners
3 of Public Accounts within 10 business days of the issuance of
4 the bonds or swap agreement. All county government bond
5 financing review forms shall be kept on file at the department
6 and shall be available for public inspection for a period of
7 seven years.

8 "§11-8A-4.

9 "(a) In addition to the requirements of Section
10 11-8A-3, the bond financing agreement documents shall include
11 a detailed itemization of the costs and fees which will be
12 paid directly by the county commission or from bond proceeds
13 under the bond financing agreement. This itemization shall
14 include a statement acknowledging that the amounts of these
15 costs and fees have been presented and explained to all
16 members of the county commission prior to the sale of bonds.
17 The acknowledgement statement shall be signed by the chair of
18 the county commission or another commission member designated
19 by the county commission and by the authorized signatory for
20 the bond underwriter.

21 "(b) In addition to the requirements of Section
22 11-8A-3, the bond financing agreement documents shall include
23 a schedule of all of the debt obligations of the county for
24 the time span of the maturity of the debt obligations at
25 issue. This schedule shall include a statement acknowledging
26 that the total amount of all debt obligations and a schedule
27 of the total debt payments have been presented and explained

1 to all members of the county commission prior to the sale of
2 bonds. The acknowledgement statement shall be signed by the
3 chair of the county commission or another commission member
4 designated by the county commission and by the authorized
5 signatory for the bond underwriter.

6 "~~(b)~~ (c) In connection with a swap agreement, the
7 documentation necessary to effectuate the swap agreement shall
8 also include a statement from the authorized signatory for the
9 bond underwriter or authorized signatory of the provider of
10 the swap agreement to the effect that:

11 "(1) It has provided the county commission with a
12 disclosure of the potential risks inherent in the swap
13 agreement.

14 "(2) It has disclosed all fees associated with the
15 swap agreement.

16 "(3) It has provided the county commission with
17 documentation necessary to effectuate the swap agreement
18 including master agreements, schedules, credit support
19 annexes, confirmations, legal opinions, fairness opinions, and
20 any other information necessary to comply with subdivisions
21 (3) and (5) of subsection (c) of Section 11-8A-3."

22 Section 2. As used in Sections 2 through 7, the
23 following words shall have the following meanings:

24 (1) BOND FINANCING AGREEMENT. An agreement or other
25 document relating to the sale or issuance of bonds, including,
26 but not limited to, a bond purchase agreement, a loan

1 agreement, a refinancing agreement, or documents providing for
2 bonds sold or issued on a competitive sale basis.

3 (2) BONDS. Bonds, bond anticipation notes, warrants,
4 warrant anticipation notes, or indebtedness issued or entered
5 into on behalf of a municipality for a term of at least three
6 years or more.

7 (3) BUSINESS DAY. A day, other than a Saturday or a
8 Sunday, on which commercial banking institutions are open for
9 business in the State of Alabama and a day on which the
10 payment system of the Federal Reserve System is operational.

11 (4) CAPITAL EXPENDITURE. Any cost or expense of a
12 type that is properly chargeable to a capital account under
13 general federal income tax principles.

14 (5) GENERAL OBLIGATION INDEBTEDNESS. A bond
15 financing agreement which, according to its terms, will be
16 repaid from any funds at the disposal of the municipality.

17 (6) GENERAL OPERATING EXPENSES. Any expense incurred
18 by a county in the general operation and function of the
19 county. The term includes salaries and other associated
20 expenses, but does not include a capital expenditure or
21 expense.

22 (7) LIMITED OBLIGATION INDEBTEDNESS. Bonds which,
23 according to their terms, are required to be paid solely from
24 the proceeds of a specific tax, fee, license, charge, or other
25 specific revenue stream.

26 (8) NET PRESENT VALUE SAVINGS. The projected cost
27 savings to the municipality from refinancing any bonds, by

1 comparing the net present value of the costs of the bonds
2 proposed for refunding, including the original costs of
3 issuance and the payment of principal and interest on the
4 bonds proposed for refunding, with the net present value of
5 the costs of the proposed bonds, including the costs of
6 issuance and refinancing and the payment of principal and
7 interest on the proposed bonds.

8 (9) SWAP AGREEMENT. A swap agreement as defined in
9 Article 3 of Chapter 1 of Title 41, Code of Alabama 1975.

10 Section 3. Notwithstanding any other provision of
11 law, after the effective date of this act, no municipality may
12 enter into any bond financing agreement or other transaction
13 related to establishing bonded indebtedness that constitutes
14 or creates an obligation, debt, or charge against the credit
15 or taxing power of the municipality until and unless the
16 municipality has satisfied the requirements of Sections 2
17 through 6.

18 Section 4. (a) In addition to any and all other
19 documents presented for examination and execution of a bond
20 financing agreement which, for the purposes of Sections 2
21 through 6, takes place at the time a municipality makes an
22 official award of the bonds, the municipality shall execute a
23 government bond financing review form. The standard review
24 form shall be prepared by the Department of Examiners of
25 Public Accounts and shall include statements to the effect
26 that:

1 (1) The municipality has considered whether it can
2 satisfy its financial obligations for the life of the bonds.

3 (2) In the case of limited obligation indebtedness,
4 the municipality has identified the source for the debt
5 service payments for the life of the bonds and, in the case of
6 general obligation indebtedness, the municipality has
7 indicated that the full faith and credit of the municipality
8 has been pledged for the debt service payments for the life of
9 the bonds.

10 (3) The municipality has considered the period of
11 usefulness of the improvement or property for which the bonds
12 are to be issued in light of the duration of the term of the
13 bonds under the bond financing agreement.

14 (4) The municipality acknowledges that bond proceeds
15 shall not be used for general operating expenses of the
16 municipality.

17 (5) The municipality has received from the bond
18 underwriter, bond counsel, issuer's counsel, trustee, and any
19 others associated with the issuance of bonds an itemized
20 listing of their respective fees and all other costs which
21 shall not be subject to change prior to the sale or issuance
22 of bonds.

23 (6) The municipality has received from the bond
24 underwriter a clear and understandable written proposal
25 explaining all details of the proposed bond issue, its
26 repayment schedule, and any external factors which could

1 affect the total cost to the municipality if it issues the
2 bonds.

3 (7) The municipality has considered the effect, if
4 any, that the bonds will have on the municipality's
5 constitutional debt limit.

6 (8) The municipality has received from the bond
7 underwriter information demonstrating that the estimated
8 interest rate on the bonds is reasonable and, that if
9 information regarding similar recent issuances is available,
10 the interest rates are comparable with other similar issuances
11 based on current bond market conditions on the date of
12 execution of the bond financing agreement.

13 (9) The municipality has received from the bond
14 underwriter a separate document of the potential debt service
15 schedule for all municipality debt for the time span of the
16 maturity of the debt obligation at issue and has been advised
17 of the ability of the municipality to pay all of the debt
18 obligations.

19 (b) If the proceeds of the proposed bonds are to be
20 used in whole or in part for the purpose of refinancing or
21 refunding outstanding bonds, the government bond financing
22 review form shall also include statements to the effect that:

23 (1) The municipality understands how the issuance of
24 refunding bonds may extend the municipality's initial debt
25 repayment period and the total cost paid by the municipality
26 by the end of the refunding period.

1 (2) The municipality has considered whether the
2 refunding bonds will create net present value savings for the
3 municipality, including the costs of refinancing.

4 (c) In connection with a swap agreement, the
5 government bond financing review form shall include statements
6 to the effect that:

7 (1) The municipality has complied with paragraph a.
8 of subdivision (2) of Section 41-1-42, Code of Alabama 1975.

9 (2) The municipality has reviewed or had explained
10 by the adviser selected as provided in Section 6 all
11 documentation provided pertaining to the swap agreement as
12 required in subsection (d).

13 (3) The municipality has designated an employee or
14 official who will have primary responsibility for the
15 consideration, execution, and monitoring of interest rate
16 swaps and financial hedges entered into by the municipality.

17 (4) The municipality has determined whether the
18 municipality's obligations under the swap agreement constitute
19 a general obligation indebtedness of the municipality and
20 whether the source of payment is sufficient.

21 (5) The municipality has sought and received
22 specific information disclosing the potential risks inherent
23 in the swap agreement including those risks commonly referred
24 to in the derivatives industry as basis risk, tax risk,
25 interest rate risk, counterparty risk, termination risk,
26 market-access risk, rollover or anticipation risk, and credit
27 risk.

1 (d) The government bond financing review form shall
2 also include a statement acknowledging that all enumerated
3 items on the review form have been considered by the
4 municipality, and that the municipality has voted to enter
5 into the bond financing agreement or swap agreement by an
6 affirmative vote of a majority of the members of the city
7 council of the municipality. The statement of acknowledgment
8 shall be signed by the chair of the city council of the
9 municipality or another member designated by the municipality
10 and the adviser or consultant utilized by the municipality
11 pursuant to Section 6.

12 (e) A copy of the government bond financing review
13 form shall be forwarded to the Department of Examiners of
14 Public Accounts within 10 business days of the issuance of the
15 bonds or swap agreement. All government bond financing review
16 forms shall be kept on file at the Department of Examiners of
17 Public Accounts and shall be available for public inspection
18 for a period of seven years.

19 Section 5. (a) In addition to the requirements of
20 Section 4, the bond financing agreement documents shall
21 include a detailed itemization of the costs and fees which
22 will be paid directly by the municipality or from bond
23 proceeds under the bond financing agreement. This itemization
24 shall include a statement acknowledging that the amounts of
25 these costs and fees have been presented and explained to all
26 members of the city council of the municipality prior to the
27 sale of bonds. The acknowledgement statement shall be signed

1 by the chair of the city council or another member designated
2 by the municipality and by the authorized signatory for the
3 bond underwriter.

4 (b) In addition to the requirements of Section 4,
5 the bond financing agreement documents shall include a
6 schedule of all of the debt obligations of the municipality
7 for the time span of the maturity of the debt obligation at
8 issue. This schedule shall include a statement acknowledging
9 that the total amount of all debt obligations and a schedule
10 of the total debt payments have been presented and explained
11 to all members of the city council prior to the sale of bonds.
12 The acknowledgement statement shall be signed by the chair of
13 the city council or a member designated by the city council
14 and by the authorized signatory for the bond underwriter.

15 (c) In connection with a swap agreement, the
16 documentation necessary to effectuate the swap agreement shall
17 also include a statement from the authorized signatory for the
18 bond underwriter or authorized signatory of the provider of
19 the swap agreement to the effect that:

20 (1) It has provided the municipality with a
21 disclosure of the potential risks inherent in the swap
22 agreement.

23 (2) It has disclosed all fees associated with the
24 swap agreement.

25 (3) It has provided the municipality with
26 documentation necessary to effectuate the swap agreement
27 including master agreements, schedules, credit support

1 annexes, confirmations, legal opinions, fairness opinions, and
2 any other information necessary to comply with subdivisions
3 (3) and (5) of subsection (c) of Section 4.

4 Section 6. In preparing the government bond
5 financing review form, the municipality shall consult with and
6 obtain advice from either an attorney for the municipality,
7 or, at the option of the municipality, a certified public
8 accountant regarding any and all bond or swap proposals
9 received by the municipality. The person or persons utilized
10 by the municipality for advice and consultation shall review
11 all documents to be included at the execution of the bond
12 financing agreement or swap agreement.

13 Section 7. The requirements of Sections 2 through 6
14 shall not apply with respect to any bond financing agreement
15 or other transaction related to incurring or establishing
16 bonded or other indebtedness that constitutes or creates an
17 obligation, debt, or charge against the credit or taxing power
18 of a municipality, which obligation, debt, or charge is to be
19 incurred to finance improvements to, betterments, or expansion
20 of a gas, electric, water, sewer, or other utility system
21 owned or controlled by the municipality or is to be payable
22 from revenues or properties of a gas, electric, water, sewer,
23 or other utility system pledged or otherwise contractually
24 obligated to the payment of the obligation, debt, or charge.

25 Section 8. This act shall become effective on
26 October 1, 2019, following its passage and approval by the
27 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to
the Senate committee on Governmental Affairs..... 02-APR-19

Read for the second time and placed on
the calendar..... 09-APR-19

Read for the third time and passed as
amended 18-APR-19

Yeas 33
Nays 0

Patrick Harris,
Secretary.