SB245

136177-1

By Senators Holtzclaw and Orr

RFD: Finance and Taxation Education

First Read: 08-FEB-12
SYNOPSIS: Under existing law, the Alabama Public School and College Authority is authorized to sell and issue bonds and apply the proceeds for the construction of new school facilities as well as the renovation of existing school facilities in school systems directly impacted by the 2005 Base Realignment and Closure.

This bill would change the baseline date to January 1, 2006.

This bill would provide that the average salary or equivalent wage can be attributed to 2005 BRAC that is equal to or exceeding $80,000.

This bill would remove the provision that a school district may not receive the proceeds of the bonds issued by the Public School and College Authority unless the district or political subdivision has experienced an increase in the sales tax rate.
This bill would remove the provision that in order to qualify for bond proceeds, a local school system may redirect an existing tax not currently dedicated to schools to qualify for bonds.

A BILL
TO BE ENTITLED
AN ACT

To amend Sections 16-16A-2, 16-16A-7, and 16-16A-8, Code of Alabama 1975, to change the baseline date to January 1, 2006; to provide that the average salary or equivalent wage can be attributed to 2005 BRAC that is equal to or exceeding $80,000; to remove the provision that a school district may not receive the proceeds of the bonds issued by the Public School and College Authority unless the district or political subdivision has experienced an increase in the sales tax rate; and to remove the provision that in order to qualify for bond proceeds, a local school system may redirect an existing tax not currently dedicated to schools to qualify for bonds. 

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 16-16A-2, 16-16A-7, and 16-16A-8, Code of Alabama 1975, are amended to read as follows:

"§16-16A-2."
"As used in this chapter, the following words and phrases shall have the following meanings:

"(1) AUTHORITY. The Public School and College Authority.

"(2) BASELINE DATE. January 1, 2010 2006.


"b. Subsequent BRAC Actions are closure actions according to any Base Closure and Realignment Commission Report of the U.S. Department of Defense subsequent to the 2005 Base Closure and Realignment Commission Report of the U.S. Department of Defense or administrative actions by a United States government agency, department, or organization which positively impact the number of Redstone Arsenal jobs.

"(4) BRAC DISTRIBUTIONS. Bond proceeds to be distributed to the local school districts for purposes of and as allocated by this chapter.

"(5) BRAC IMPACTED AREA. The geographic area within Madison County and the City of Huntsville described by a closed perimeter boundary consisting of Cummings Research Park, East and West, Thornton Research Park, Redstone Gateway EUL Area, and Redstone Arsenal.

"(6) DETERMINATION DATE. September 30 of the fiscal year in which the Authority obtains certification that the jobs requirements of this chapter have been satisfied.
"(7) GARRISON. The Garrison located at Redstone Arsenal, Alabama, and any successor thereto.

"(8) PERMITTED INVESTMENTS. (i) Government Securities; (ii) bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Bank for Cooperatives; Federal Intermediate Credit Banks; Federal Financing Bank; Federal Home Loan Banks; Federal Farm Credit Bank; Export-Import Bank of the United States; Federal Land Banks; or Farmers Home Administration or any other agency or corporation which has been or may hereafter be created by or pursuant to an act of Congress of the United States as an agency or instrumentality thereof; (iii) bonds, notes, pass through securities or other evidences of indebtedness of Government National Mortgage Association and participation certificates of Federal Home Loan Mortgage Corporation; (iv) full faith and credit obligations of any state, provided that at the time of purchase such obligations are rated at least "AA" by Standard & Poor's Rating Group and at least "Aa" by Moody's Investors Service; (v) public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by contracts with the United States of America, or temporary notes, preliminary notes or project notes issued by public agencies or municipalities, in each case fully secured as to the payment to both principal and interest by a requisition or payment agreement with the United States of America; (vi) time
deposits evidenced by certificates of deposit issued by banks or savings and loan associations which are members of the Federal Deposit Insurance Corporation, provided that, to the extent such time deposits are not covered by federal deposit insurance, such time deposits (including interest thereon) are fully secured by a pledge of obligations described in clauses (i), (ii), (iii), and (v) above, which at all times have a market value not less than the amount of such bank time deposits required to be so secured and which meet the greater of 100% collateralization or the "AA" collateral levels established by Standard & Poor's Ratings Group for structured financings; (vii) repurchase agreements for obligations of the type specified in clauses (i), (ii), (iii), and (v) above, provided such repurchase agreements are fully collateralized and secured by such obligations which have a market value at least equal to the purchase price of such repurchase agreements which are held by a depository satisfactory to the State Treasurer in such manner as may be required to provide a perfected security interest in such obligations, and which meet the greater of 100% collateralization or the "AA" collateral levels established by Standard & Poor's Ratings Group for structured financings; and (viii) uncollateralized investment agreements with, or certificates of deposit issued by, banks or bank holding companies, the senior long-term securities of which are rated at least "AA" by Standard &
Poor's Ratings Group and at least "Aa" by Moody's Investors Service.

"§16-16A-7.

"(a) The Legislature finds that the number of students attending the several school systems located in those areas of North Alabama that will be directly impacted by the 2005 BRAC and Subsequent BRAC Actions will collectively increase by an estimated 9,000 students. As a result, there will be a need for the construction of additional school facilities as well as the renovation of existing school facilities. The Legislature also finds that the 2005 BRAC and Subsequent BRAC Actions will have a positive impact on future receipts to the Education Trust Fund, as the significant population growth in North Alabama will increase sales, income, and other tax collections. Thus, it is an efficient use of state funds to allow such revenue growth to help pay for capital improvement costs associated with BRAC-related school construction.

"(b) The Alabama Public School and College Authority is hereby authorized to sell and issue its Bonds in the aggregate principal amount of up to one hundred seventy-five million dollars ($175,000,000) once proof is provided deemed adequate by the Authority that 7,000 4,700 direct full-time jobs can be attributed to 2005 BRAC, Subsequent BRAC Actions, and as a result of administrative actions by a United States government agency, department, or organization placed in...
service after January 1, 2010, and paying an average salary or equivalent wages equal to or exceeding eighty-five thousand dollars ($85,000) per year. Recipient school districts shall apply such proceeds for either the renovation of existing school facilities or the construction of new school facilities in the several school districts located in the BRAC Impacted Area or in the Primary Study Area, as such area was identified in the Tennessee Valley Regional Growth Coordination Plan of March 2009.

"(1) Provided, however, that in no event shall any school district receive the proceeds of the bonds issued herein unless such district or political subdivision including the district has experienced, on or after July 1, 2008, an increase in the sales tax rate of at least one-half cent, or equivalent property tax rate increase, with the revenue generated from such tax rate increase dedicated to schools within that district or political subdivision. To the extent a school district is located within a political subdivision with a sales tax of nine percent or greater, that school district may use any funds available to satisfy the local match requirements in this subdivision and subdivision (2).

"(2)(1) The bond proceeds of the Authority authorized by this chapter shall be provided as a dollar for dollar match for local support of such capital projects. School systems seeking to participate in the bond issue program authorized by this chapter shall remit to the
Authority amounts equal to half of the semi-annual debt
service payments required to satisfy all covenants of the debt
issuance authorized under this chapter for the satisfaction of
such debt obligations attributable to the cost of projects to
be placed in service in such school system at such times as
the Authority shall require.

"(3)(2) In the event a school district fails to meet
the local revenue requirements in this chapter within 12
months of the Determination Date, the aggregate amount
authorized in this chapter shall be reduced by the amount
allocated to that school district. In no event shall, and
those proceeds shall be reallocated to any remaining approved
school system.

"(4)(3) The Bonds herein authorized shall be in
addition to all other bonds previously authorized to be issued
by the Alabama Public School and College Authority, and the
powers conferred herein are in addition to all other powers
heretofore conferred on the Alabama Public School and College
Authority by acts heretofore enacted by the Legislature.

"(c) The Bonds shall be signed by the president or
vice-president of the Alabama Public School and College
Authority, and the seal of the Alabama Public School and
College Authority affixed thereto, or a facsimile thereof
imprinted thereon, and attested by its secretary. All
signatures of the president, vice-president, and secretary may
be facsimile signatures if the Alabama Public School and
College Authority, in its proceedings with respect to issuance, provides for manual authentication, which may be in the form of a certificate as to registration, of the Bonds by a trustee, registrar, or paying agent, or by named individuals who are employees of the state and who are assigned to the Finance Department or State Treasurer's Office of the state. All Bonds bearing signatures or facsimiles of the signatures of officers of the Alabama Public School and College Authority in office on the date of signing thereof shall be valid and binding notwithstanding that before the delivery thereof and payment therefor, any officer whose signature appears thereon shall have ceased to be an officer of the Alabama Public School and College Authority. The Bonds and the income therefrom shall be exempt from all taxation in the State of Alabama, may be used as security for deposits, and shall be eligible for investments of fiduciary funds, as provided in the 1965 Act. The Bonds shall be construed to have all the qualities and incidents of negotiable instruments subject to any registration provisions pertaining to transfers. The Alabama Public School and College Authority and the Bonds shall be exempt from all laws of the state governing usury including, without limitation, the provisions of Title 8, Chapter 8, or any subsequent statute of similar import. The Bonds shall be in such form or forms and denomination or denominations and of such tenor and maturities, shall bear such rate or rates of interest payable and evidenced in such
manner, may be made subject to redemption prior to their maturities, and may contain provisions not inconsistent with this chapter, all as may be provided by the resolution of the Alabama Public School and College Authority under which the Bonds may be issued; provided, that no Bonds shall have a specified maturity date later than twenty years after their date; and provided further, that those Bonds having maturities more than ten years after their date shall be subject to redemption at the option of the Alabama Public School and College Authority on any date on and after the tenth anniversary after their date at such redemption price or prices and under such conditions as may be prescribed in the proceedings of the Alabama Public School and College Authority under which they are issued. For the purpose of paying the principal of, premium, if any, and interest on the Bonds or any Refunding Bonds, the Alabama Public School and College Authority shall designate the State Treasurer or such bank or banks as the Alabama Public School and College Authority, in its discretion, determines to be appropriate and desirable. Funds for the payment of debt service shall be transferred by the Alabama Public School and College Authority or the State Treasurer on behalf of the Alabama Public School and College Authority to the designated paying agent on the actual due date of such principal, premium, if any, or interest.

"(d) The Bonds may be sold by the Alabama Public School and College Authority from time to time in series, and
if sold in more than one series, may all be authorized in one
initial resolution of the Alabama Public School and College
Authority with the pledges therefor made by the Alabama Public
School and College Authority in such initial resolution
although some of the details applicable to each series may be
specified in the respective resolutions under which the
different series are issued. The Alabama Public School and
College Authority, in the course of establishing, by
resolution, a principal amount of Bonds to be authorized for
sale at any given time, or to be sold in any series, may take
into account the existence of any unexpended proceeds of prior
issues of bonds of the Alabama Public School and College
Authority, and of any other issuer, if such should be deemed
by the Alabama Public School and College Authority to be
relevant, and may structure the portions of the allocations
provided for in this chapter to be distributed from the
proceeds of a particular series, constituting less than all
the Bonds authorized by this chapter, as the Alabama Public
School and College Authority deems necessary or prudent in
order to enable the Alabama Public School and College
Authority to comply with any tax covenants that may be
required of it, or that may be deemed by it to be prudent to
be given by it, in connection with the sale of any series of
the Bonds. The Alabama Public School and College Authority may
fix the method and the terms and conditions under which the
sale of any series of the Bonds may otherwise be held;
provided that such terms and conditions shall not conflict with any requirement of this chapter. Approval by the Governor of Alabama of the terms and conditions under which any of the Bonds may be issued shall be requisite to their validity.

Before any series of the Bonds shall be offered for sale by the Alabama Public School and College Authority, the Governor shall first determine that the issuance of that series of Bonds and the application of the taxes pledged to the payment of the principal of the Bonds as they mature and the interest thereon as the same shall come due will not impair the adequacy of the Trust Fund to pay appropriations therefrom and to support the public schools and institutions of higher learning during the period over which the Bonds will mature. The Governor's determination in this regard shall be in writing signed by the Governor and such determination shall be final and conclusive. Neither a public hearing nor consent of the State Department of Finance or any other department or agency shall be a prerequisite to the issuance of any of the Bonds.

"(e) For the purpose of providing for payment of the principal, premium, if any, and interest on the Bonds, and to accomplish the objectives of this chapter, there is hereby irrevocably pledged to those purposes, and hereby appropriated, such amount as may be necessary therefor from the following sources:
"(1) The residue of the receipts from the excise tax, "the utility gross receipts tax," levied by Title 40, Chapter 21, Article 3, as amended, "Article 3," remaining after payment of the expenses of administration and enforcement of Article 3, being that portion of the tax that is required by Article 3 to be deposited in the State Treasury to the credit of the Trust Fund, after there shall have been taken from the residue the amount necessary to pay at their respective maturities the principal of and interest on those bonds issued by the Authority under this chapter or any prior act that may be outstanding at the time of the delivery of the respective series of the Bonds authorized herein.

"(2) The residue of the receipts from the excise tax, "the utility service use tax," levied by Title 40, Chapter 21, Article 4, "Article 4," remaining after payment of the expenses of administration and enforcement of Article 4, being that portion of the tax that is required by Article 4 to be deposited in the State Treasury to the credit of the Trust Fund, after there shall have been taken from the residue the amount necessary to pay at their respective maturities the principal of and interest on those bonds issued by the Authority under this chapter or any prior act that may be outstanding at the time of the delivery of the respective series of the Bonds authorized herein.

"(3) To the extent and to the extent only that the revenues appropriated in the foregoing subdivisions (1) and
(2) of this subsection may not be sufficient to pay at their respective maturities the principal of, premium, if any, and interest on the Bonds, the residue of the receipts from the excise tax, "the sales tax," levied by Title 40, Chapter 23, Article 1, Division 1, as amended, "Article 1," after there shall have been taken from the residue the amounts appropriated for other educational purposes in Section 40-23-35, which residue constitutes that portion of the receipts from the sales tax that is now required by law to be paid into the Trust Fund, and after there shall have been taken from the residue amounts sufficient to meet all prior charges on the residue including such amounts as may be necessary to pay at their respective maturities the principal of and interest on those bonds issued by the Authority under this chapter or any prior act that may be outstanding at the time of the delivery of the respective series of the Bonds authorized herein.

"(4) To the extent and to the extent only that the revenues appropriated in the foregoing subdivisions (1), (2), and (3) of this subsection may not be sufficient to pay at their respective maturities the principal of, premium, if any, and the interest on the Bonds, the residue of the receipts from the excise tax, "the use tax," levied by Title 40, Chapter 23, Article 2, as amended, "Article 2," after there shall have been taken from the residue the amount necessary to meet the expenses of the State Department of Revenue in
collecting the use tax, which residue constitutes that portion of the receipts from the use tax that is now required by law to be paid into the Trust Fund, and after there shall have been taken from the residue such amounts as may be necessary to meet all prior charges on the use tax including the amounts sufficient to pay at their respective maturities the principal of and interest on those outstanding bonds referred to in subdivision (3) of this subsection.

"(5) All monies hereby appropriated and pledged shall constitute a sinking fund for the purpose of paying the principal of, premium, if any, and interest on the Bonds. The State Treasurer is authorized and directed to pay at their respective maturities the principal of, premium, if any, and interest on the Bonds out of this fund and out of the residues of the tax receipts herein appropriated and pledged for the benefit of the Bonds, and is further authorized and directed to set up and maintain appropriate records pertaining thereto.

"(f) The Bonds shall not be general obligations of the State of Alabama but shall be limited obligations payable solely out of the residues of the tax receipts appropriated and pledged herein. All Bonds issued by the Alabama Public School and College Authority pursuant to the provisions of this chapter shall be solely and exclusively obligations of the Alabama Public School and College Authority and shall not constitute or create an obligation or debt of the State. As security for the payment of the principal of, premium, if any,
and interest on the Bonds, the Alabama Public School and
College Authority is hereby authorized and empowered to pledge
the residues of the tax receipts that are appropriated and
pledged herein. All such pledges made by the Alabama Public
School and College Authority shall take precedence in the
order of the adoption of the resolutions containing the
pledges. All such pledges shall be prior and superior to any
pledges that may be made for any refunding bonds hereafter
issued by the Alabama Public School and College Authority
under the provisions of any act heretofore enacted.

"(g) For the purpose of refunding any Bonds or
Refunding Bonds of the Alabama Public School and College
Authority issued under the provisions of this chapter, or any
other act previously enacted, or any combination thereof,
whether such refunding shall occur before, at, or after the
maturity of the Bonds refunded and for the purpose of paying
all premiums and expenses of such refunding, including, but
not limited to, attorneys' fees, costs of printing the
Refunding Bonds, fiscal agents' fees, and accountants' fees,
the Alabama Public School and College Authority is hereby
authorized to sell and issue its Refunding Bonds. Such
Refunding Bonds may be sold and issued from time to time, by
negotiated or public sale, and on such other terms and
conditions as the Alabama Public School and College Authority
shall determine to be advantageous and shall adopt and provide
for in its proceedings for the sale and issuance of such
Refunding Bonds. Provided, however, no Refunding Bonds shall be issued unless the present value of all debt service on the Refunding Bonds, computed with a discount rate equal to the true interest rate of the Refunding Bonds and taking into account all underwriting discount and other issuance expenses, shall not be greater than 97 percent of the present value of all debt service on the Bonds to be refunded, computed using the same discount rate and taking into account the underwriting discount and other issuance expenses originally applicable to such Bonds, determined as if such Bonds to be refunded were paid and retired in accordance with the schedule of maturities, considering mandatory redemption as scheduled maturity, provided at the time of their issuance. Provided further that the average maturity of the Refunding Bonds, as measured from the date of issuance of such Refunding Bonds, shall not exceed by more than three years the average maturity of the Bonds to be refunded, as also measured from such date of issuance, with the average maturity of any principal amount of Bonds to be determined by multiplying the principal of each maturity by the number of years, including any fractional part of a year, intervening between such date of issuance and each such maturity, taking the sum of all such products, and then dividing such sum by the aggregate principal amount of Bonds for which the average maturity is to be determined. For the purpose of providing funds to enable the Alabama Public School and College Authority to pay at their respective maturities
the principal of, premium, if any, and interest on the Refunding Bonds issued under this chapter, the Alabama Public School and College Authority is hereby authorized to pledge irrevocably for such purpose, and there is hereby appropriated for such purpose, such amount as may be necessary of the residues of the receipts from the excise taxes pledged and appropriated herein, any reserves or sinking funds established by the Alabama Public School and College Authority, as well as revenues of the Alabama Public School and College Authority from any other sources specified in the proceedings wherein the Refunding Bonds are authorized to be issued. Pending the application of the proceeds of Refunding Bonds issued in accordance with this subsection, the proceeds, together with investment earnings therefrom, and amounts in any sinking fund, together with investment earnings thereon, may be held by the State Treasurer as treasurer of the Alabama Public School and College Authority in trust, or may be deposited by the State Treasurer in trust, on such terms as the State Treasurer and the Alabama Public School and College Authority shall approve, with a trustee or escrow agent, which trustee or escrow agent shall be a banking institution or trust company authorized to exercise trust powers in Alabama, for investment in Permitted Investments, as such term is defined in Act 2007-415. Proceeds of Refunding Bonds shall be so invested and applied as to assure that the principal, interest, and redemption premium, if any, on the Bonds being
refunded shall be paid in full on the respective maturity, redemption, or interest payment dates. Refunding Bonds issued by the Alabama Public School and College Authority shall not be general obligations of the Alabama Public School and College Authority but shall be payable solely from the sources specified in this chapter and in the proceedings whereby the Refunding Bonds are authorized to be issued. All Refunding Bonds issued by the Alabama Public School and College Authority shall be solely and exclusively obligations of the Alabama Public School and College Authority and shall not create debts of the State of Alabama. The faith and credit of the State of Alabama shall never be pledged for the payment of any Refunding Bonds issued by the Alabama Public School and College Authority under this chapter. The Alabama Public School and College Authority may contract with respect to the safekeeping and application of the proceeds of Refunding Bonds and other funds included therewith and the income therefrom, and shall have the right and power to appoint a trustee therefor, which may be any bank or company authorized to exercise trust powers and located within and/or without the state. All pledges made by this chapter, or by the Alabama Public School and College Authority pursuant to the provisions of this chapter, for the benefit of Refunding Bonds issued under this chapter, and all such pledges for the benefit of Refunding Bonds which may be issued to refund any bonds issued under any prior act, shall take precedence in the order of the
adoption of the resolutions authorizing the issuance of such Refunding Bonds. Bonds refunded prior to their maturity with the proceeds of Refunding Bonds shall be deemed paid and the pledges herein and by the Alabama Public School and College Authority made for the payment thereof defeased if the Alabama Public School and College Authority, in its proceedings regarding issuance of the Refunding Bonds, shall provide for and establish a trust or escrow fund comprised of monies or Government Securities, as such term is defined in Act 2007-415, or both, sufficient to pay, when due, the entire principal of, premium, if any, and interest on the Bonds to be refunded thereby; provided, that such Government Securities, as such term is defined in Act 2007-415, shall not be subject to redemption prior to their maturities other than at the option of the holder thereof. Upon the establishment of such a trust or escrow fund, the refunded Bonds shall no longer be deemed to be outstanding, shall no longer be secured by the funds pledged therefor in this chapter, shall no longer be obligations of the Alabama Public School and College Authority, and shall be secured solely by and payable from monies and Government Securities, as such term is defined in Act 2007-415, deposited in such trust or escrow fund.

"(h) The Alabama Public School and College Authority is authorized to pay out of proceeds of any series of Bonds the costs and expenses incurred in connection with the issuance of such Bonds, including, without limitation, legal
and accounting fees and expenses, fees and expenses of any 
financial or fiscal advisor employed by the Alabama Public 
School and College Authority, printing costs, rating agency 
fees, and premiums or charges for any credit enhancement or 
liquidity providers. Notwithstanding any provision of this 
chapter or any previous act, in appointing, employing, or 
contracting with attorneys, fiscal advisers, trustees, paying 
agents, investment bankers, banks, and underwriters, the 
Alabama Public School and College Authority may appoint, 
employ, or contract with firms whose principal offices are 
located without or within Alabama. The Alabama Public School 
and College Authority shall hire or contract with attorneys, 
fiscal advisors, trustees, paying agents, investment bankers, 
banks, and underwriters which shall reflect the racial and 
ethnic diversity of the state. The Alabama Public School and 
College Authority shall issue Requests For Proposals for 
attorneys, fiscal advisors, trustees, paying agents, 
investment bankers, banks, and underwriters. The Alabama 
Public School and College Authority shall evaluate each 
proposed bid publicly and award each contract publicly. 
Minutes of the Alabama Public School and College Authority's 
meeting shall record the reasons for awarding each contract. 
The Alabama Public School and College Authority shall hire or 
contract with businesses or individuals which reflect the 
racial and ethnic diversity of the State. The Alabama Public 
School and College Authority shall have the power to make such
payments to the United States of America as the board of
directors of the Alabama Public School and College Authority
deems necessary to cause the interest on any bonds of the
Alabama Public School and College Authority, including the
Bonds, to be and remain exempt from, or excludible from gross
income for purposes of, federal income taxation. The Alabama
Public School and College Authority shall have the power to
make such agreements respecting the investment of funds of the
Alabama Public School and College Authority as the Alabama
Public School and College Authority shall deem necessary in
order that the interest income on bonds of the Alabama Public
School and College Authority be and remain exempt from, or
excludible from gross income for purposes of, federal income
taxation.

"§16-16A-8.

"In addition to the counties participating under
Section 16-16A-7, Jackson County and Marshall County may also
participate in the funding benefits of this chapter. In
addition, in order to qualify for bond proceeds, a local
school system may redirect an existing tax not currently
dedicated to schools to qualify for bonds in lieu of the
requirements otherwise provided for in Section 16 16A-7."

Section 2. This act shall become effective
immediately following its passage and approval by the
Governor, or its otherwise becoming law.