

1 HB323
2 149652-3
3 By Representative Hill
4 RFD: Commerce and Small Business
5 First Read: 21-FEB-13

1 ENGROSSED

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4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 To amend Sections 11-99A-9, 11-99A-11, 11-99A-13,
9 11-99A-17, 11-99A-21, 11-99A-30, and 11-99A-42, 11-99A-43 of
10 the Code of Alabama 1975, and to add Section 11-99A-52 to the
11 Code of Alabama 1975; relating to the Alabama Improvement
12 District Act; to provide further for the terms of office of
13 the board of directors of a district; to clarify the procedure
14 for the assessment of lands within a district and that such
15 procedure shall apply only to the lands actually assessed; to
16 clarify that the remedies for nonpayment of assessments shall
17 be consistent with current Alabama law; to provide further for
18 temporary construction financing of improvements by a
19 district; to provide that certain amendments to the Alabama
20 Improvement District Act are declarative of existing law and
21 shall have both a prospective and retrospective operation.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Sections 11-99A-9, 11-99A-11, 11-99A-13,
24 11-99A-17, 11-99A-21, 11-99A-30, 11-99A-42, and 11-99A-43,
25 Code of Alabama 1975, are amended to read as follows:

26 "§11-99A-9.

1 "(a) A board shall have The district shall have a
2 board of directors in which all powers of the district shall
3 be vested and which shall consist of the number of members
4 specified in the articles of incorporation, but not less than
5 three nor more than 11. Members of the board shall be
6 appointed by the appointing government. The articles of
7 incorporation shall specify that the members of the board
8 serve for staggered terms, with one-third, or as near to
9 one-third as is practical, of the initial members serving for
10 ~~one year~~ four years, with one-third, or as near to one-third
11 as is practical, of the initial members to serve for ~~two~~ five
12 years, and with one-third, or as near to one-third as is
13 practical, of the initial members to serve for ~~three~~ six
14 years. Thereafter, the successors to members of the board of
15 directors shall serve for ~~three-year~~ six-year terms. The
16 proceedings of the appointing government by which members of
17 the board are appointed shall specify the term for which the
18 appointment is made. Upon the expiration of the term of office
19 of any member of the board, the person whose term shall have
20 expired shall remain a member of the board until his or her
21 successor ~~has~~ shall have been duly appointed by the appointing
22 government. Members of the board need not be owners,
23 residents, electors, or taxpayers of the appointing government
24 or the state.

25 "(b) No vacancy in the membership of the board of
26 directors or the voluntary disqualification or abstention of

1 any member thereof shall impair the right of a quorum to
2 exercise all of the powers and duties of the board.

3 "§11-99A-11.

4 ~~"A district may petition the appointing government~~
5 ~~to assess some or all of the land within the district for the~~
6 ~~purpose of acquiring, constructing, or installing~~
7 ~~improvements,~~ (a) For the payment of all or any part of the
8 costs of improvements and the costs referenced in Sections
9 11-99A-2(6)(v) and (w) and 11-99A-15(c), a district may
10 petition the appointing government for the assessment of all
11 or any part of that land within the district which is
12 specifically benefited or increased in value by such
13 improvements in accordance with the following procedure:

14 "(1) The board shall prepare plans for the
15 acquisition, construction, or installation of the
16 improvements. The plans shall include (i) a reasonable
17 description of the nature and location of the improvements;
18 and (ii) an estimate of the ~~cost~~ costs of the improvements,
19 which may include the costs referenced in Section
20 11-99A-2(6)(v) and (w) and Section 11-99A-15(c); (iii) a
21 description or designation of the land upon which the
22 assessment shall be levied, which may be made in a manner
23 provided in Section 11-99A-4(a)(2); and (iv) the manner in
24 which, or the methodology by which, the assessments shall be
25 made.

26 "(2) The proposed assessment of each tract in the
27 district, based on the estimated increase in value of each

1 tract resulting from the special benefits derived from the
2 proposed improvements, and consistent with Section 223 of the
3 Constitution of Alabama of 1901.

4 "(3) The petition shall further include either a
5 document executed by each owner of land within the district
6 that will be subject to the assessment setting forth the
7 written consent thereof to such assessment and approving the
8 petition, or a certification that an election has been held
9 within the district, and that the owners of 51 percent or more
10 of the land within the district that will be subject to such
11 assessment and 51 percent or more of the residents of the
12 district have voted in favor of the assessment.

13 "(4) Except as provided in Section 11-99A-47, the
14 district must comply with all state, county, and municipal
15 laws, rules, and regulations and the district must obtain all
16 approvals that may be required by the appointing government or
17 the government within which the district is located.

18 "Upon receipt of the petition by the council, the
19 council shall determine what approvals may be required by the
20 appointing government in addition to the approval of the
21 council, including, but not limited to, approval of zoning,
22 subdivision, fire regulations, and other ordinances, rules,
23 codes, and regulations of the appointing government, and if
24 other approvals are required, the appointing government shall
25 forward the petition, or applicable portions thereof, to the
26 appropriate boards and agencies to consider whether to grant
27 the petition and to notify the district of the necessity of

1 obtaining approvals. The petition shall be held by the
2 appointing government in abeyance until all approvals as may
3 be required have been received, or variances or exceptions
4 granted.

5 "Failure to notify the district of any required
6 approval shall not relieve the district from complying with
7 the required approval. No cause of action may be maintained
8 against the appointing government, its officers, employees,
9 servants, or agents for failure to notify the district of any
10 required approval.

11 ~~"(5) Upon receipt of all required approvals,~~
12 ~~variances, or exceptions, the council shall conduct a hearing~~
13 ~~with respect to the petition, and if considered expedient by~~
14 ~~the council, the council may preliminarily assess the property~~
15 ~~within the district as proposed in the petition and shall~~
16 ~~further take any actions with respect to tax exemptions~~
17 ~~considered expedient under subsection (c) of Section~~
18 ~~11-99A-20.~~

19 ~~"(6) (5)~~ In the event that the board determines that
20 it is necessary to amend its petition to the appointing
21 government in order to conform to its rules, regulations, and
22 ordinances, or to obtain variances and exceptions as may be
23 appropriate, or to obtain approval of the petition by the
24 council, the board may do so.

25 "§11-99A-13.

26 ~~"Upon the entry into contingent contracts or receipt~~
27 ~~of contingent bids, the board shall submit to the council a~~

1 ~~recommended final calculation of the cost of acquiring,~~
2 ~~installing, or constructing the improvements. Upon receipt of~~
3 ~~the calculation, the council shall, if it considers it~~
4 ~~expedient, declare the assessment final, with adjustments as~~
5 ~~may have been recommended by the board. As soon as possible~~
6 ~~after receipt by the appointing government of the petition and~~
7 ~~all required approvals, variances, or exceptions, the council~~
8 ~~shall conduct a hearing with respect to the petition, and, if~~
9 ~~considered expedient by the council, the council shall confirm~~
10 ~~and make final the assessment or the methodology by which the~~
11 ~~assessments shall be made, as provided in the petition,~~
12 ~~whereupon the assessments and methodology therefor shall stand~~
13 ~~confirmed and be and remain legal, valid, and binding liens~~
14 ~~upon the property upon which the assessments are made, as~~
15 ~~provided in this chapter.~~ The final assessment of each tract
16 in the district shall be based on the estimated increase in
17 value of each tract resulting from the special benefits
18 derived from the improvements, and consistent with Section 223
19 of the Constitution of Alabama of 1901, but shall not be made
20 against any land owned or used by a utility in connection with
21 the distribution, transmission, or generation of electric
22 power. If the council considers the recommendation
23 inexpedient, the council shall advise the board of the reasons
24 for its determination, and the board may submit a revised
25 recommendation to the appointing government.

26 "§11-99A-17.

1 "If bonds are issued with respect to all or part of
2 an assessment, all proceeds of the assessment allocable to the
3 payment of such bonds shall be pledged to secure payment of
4 the bonds and shall be paid directly by the property owners to
5 the board or to a trustee or other holder of funds as may be
6 appointed by the board for the benefit of the holders of the
7 bonds.

8 "§11-99A-21.

9 "If the owner of any land within the district fails
10 to pay an assessment when due, time being of the essence, the
11 board may commence proceedings to foreclose on the land as
12 follows:

13 "(1) The board shall send a letter, certified mail,
14 return receipt requested, United States first class mail to
15 the last known address of the owner. The address of the owner
16 as shown in the tax assessment records of the tax assessor or
17 revenue commissioner for the county in which the property is
18 located shall be sufficient.

19 "(2) The letter shall specify that if payment is not
20 made within 10 days of the date of the letter, foreclosure
21 proceedings may be commenced.

22 "(3) Any late payment received within the 10-day
23 period will accrue a late fee of the greater of five percent
24 of the payment or fifty dollars (\$50).

25 "(4) If payment is not made within the 10-day
26 period, the entire assessment shall become immediately due and
27 payable, and the board may do either of the following:

1 "a. File a complaint in the circuit court for the
2 county in which the property is located requesting that the
3 property be foreclosed. Thirty days following service of
4 process, unless the entire assessment is paid in the meantime,
5 the court shall enter a decree declaring that the property
6 shall be sold to the highest bidder.

7 "b. Proceed to sell the property against which the
8 assessment is made to the highest bidder for cash.

9 ~~"c. In either case, the sale shall be made after
10 first giving public notice of the date and time of the sale
11 and the purpose for which the same is made, together with a
12 description of the property to be sold; and that the In either
13 case, the property shall be sold in the same manner and upon
14 the same notice as provided by law for the sale of lands or
15 property by foreclosure by power of sale for mortgages. The
16 proceeds from the sale shall first be applied to the amount of
17 the assessment and all accrued interest thereon, plus
18 penalties specified in subdivision (3), plus the attorneys'
19 fees and other expenses incurred by the board in the
20 foreclosure and suit.~~

21 "(5) If the ~~agent~~ board concludes that no bidders
22 are present or that all bids are insufficient, the ~~agent~~ board
23 may announce that the ~~auction~~ sale shall be continued to a
24 later date to be announced by public notice.

25 "(6) Upon declaring the highest bidder and receipt
26 of the purchase price, ~~an agent of~~ the board shall ~~make out~~
27 deliver a foreclosure deed to the highest bidder which shall

1 vest therein legal title to the property sold by foreclosure,
2 subject to easement or other rights in such property of
3 persons other than the owner that has failed to pay the
4 assessment. The owner of the property shall have no right of
5 redemption unless otherwise provided in the board's
6 proceedings with respect to the assessment.

7 "(7) The purchase price shall be used first for the
8 payment of the assessment, then for the cost of collection,
9 suit, foreclosure, and deed preparation, then for penalties,
10 then for accrued interest and interest until the next
11 principal payment date of bonds as provided in this chapter
12 with respect to prepayments of assessments, and then for the
13 unpaid principal amount of the assessment, and any remaining
14 portion shall be paid to the owner of the land at the owner's
15 last known address as shown in the records of the tax assessor
16 or revenue commissioner with respect to such tract of land.

17 "(8) The board may bid on any sale the same as any
18 other person, and may credit any portion of the assessment and
19 other costs as a part of its bid.

20 "(9) If the highest amount bid and accepted is
21 insufficient to pay the entire assessment, the board and
22 holders of the bonds shall have no further claim against the
23 owner of the land assessed by virtue of the assessment.

24 "(10) Any foreclosure deed shall make no warranty
25 with respect to the title to the land other than as expressly
26 stated therein.

1 "(11) At any point in the foreclosure proceedings,
2 until a bid is accepted, the board may waive the default on
3 terms as it may consider proper and reinstate the assessment,
4 subject to any contrary terms of the board's proceedings with
5 respect to the bonds.

6 "§11-99A-30.

7 "Subject to Section 223 of the Constitution of
8 Alabama of 1901, if considered appropriate by a council, the
9 cost of an assessment may be levied on property in proportion
10 to, or based upon, front feet, or square footage of each
11 parcel, acreage, ~~or~~ its estimate of the increase in value of
12 the property resulting from the improvements for which the
13 assessment was made, or in accordance with the methodology
14 determined by the district and approved by the appointing
15 government therefor.

16 "§11-99A-42.

17 "The council may make a reassessment or new
18 assessment of a parcel if:

19 "(1) A court of competent jurisdiction sets aside an
20 assessment against the parcel.

21 "~~(2) The council determines that the original~~
22 ~~assessment is excessive.~~

23 "~~(3)~~ (2) On the written advice of legal counsel, the
24 council determines that the original assessment is invalid.

25 "(3) Requested in writing by a district to correct
26 an error or omission in an existing assessment, or to comply
27 with the methodology for the assessments as approved by the

1 council as provided in this chapter, or to conform an
2 assessment or assessments to the provisions and limitations
3 thereupon of this chapter.

4 "§11-99A-43.

5 ~~"The district may issue temporary bonds for the~~
6 ~~purpose of paying the costs for which bonds may be issued, or~~
7 ~~bonds to be repaid out of the proceeds of a permanent or~~
8 ~~long-term bond issue.~~

9 "The district at any time may obtain loans, in the
10 amounts, on the terms and conditions, and payable from and
11 secured by a pledge of such funds, revenues, assessments, and
12 property, all as the board may determine, for the purpose of
13 paying any costs of the district referenced in Section
14 11-99A-2(6)(v) and (w) and Section 11-99A-15(c), and in
15 evidence thereof the district may issue assessment revenue
16 anticipation bonds, notes, or other evidences of debt. The
17 provisions of Section 11-99A-15(f) shall apply to any such
18 debt."

19 Section 2. Section 11-99A-52 is added to the Code of
20 Alabama 1975, to read as follows:

21 §11-99A-52.

22 (a) The formation and incorporation of each district
23 heretofore formed and incorporated pursuant to this chapter by
24 any county or municipality is hereby validated and confirmed
25 from the date of such formation and incorporation,
26 notwithstanding any noncompliance with any provisions of
27 Section 11-99A-4 or other provision of this chapter with

1 respect thereto; provided, however, that the validation and
2 confirmation effected by this section shall not be applicable
3 to any district the validity of which is being directly
4 challenged in appropriate judicial proceedings in any proper
5 court on the effective date of the act adding this section.

6 (b) In the event that, subsequent to June 12, 1999,
7 land within the corporate limits of a municipality is removed
8 from, or deannexed from, or otherwise determined not to be
9 within, the corporate limits of such municipality, such that
10 land within a district formed and incorporated pursuant to a
11 petition approved by such municipality under Section 11-99A-4,
12 which land is therefore within the corporate limits of such
13 municipality, is no longer contiguous at any point with land
14 within the corporate limits of such municipality, then the
15 district shall be valid in all respects from the date of
16 formation and incorporation thereof, the land within such
17 district shall be and remain within the corporate limits, and
18 a part, of such municipality, and such municipality shall
19 remain the appointing government with respect to such
20 district.

21 Section 3. It is the intent of the Legislature by
22 the passage of this act to clarify the existing provisions of
23 law and, to that end, the amendments of the Alabama
24 Improvement District Act affected by this act shall be deemed
25 declarative of existing law and shall therefore have both a
26 prospective and a retroactive or retrospective operation.

1 Section 4. In the event any provision of this act
2 shall be declared invalid or unenforceable by a court of
3 competent jurisdiction, the holding shall not affect the
4 validity or enforceability of the remaining provisions hereof,
5 which shall continue effective.

6 Section 5. This act shall become effective
7 immediately following its passage and approval by the
8 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Commerce and
Small Business..... 21-FEB-13

Read for the second time and placed
on the calendar with 1 substitute
and..... 04-APR-13

Read for the third time and passed
as amended..... 25-APR-13
Yeas 94, Nays 0, Abstains 0

Jeff Woodard
Clerk