

1 SB355
2 158969-4
3 By Senator Ward
4 RFD: Energy and Natural Resources
5 First Read: 13-FEB-14

1 SB355

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3
4 ENROLLED, An Act,

5 To amend Sections 11-89C-1, 11-89C-2, 11-89C-4,
6 11-89C-9, and 11-89C-10 of the Code of Alabama 1975, to
7 provide the governing bodies of all counties or municipalities
8 in the state which are now or may hereafter be subject to
9 regulation pursuant to the Environmental Protection Agency
10 (EPA) municipal separate storm sewer system program the
11 authority to carry out the requirements of the municipal
12 separate storm sewer system program and to provide such
13 governing bodies with the option to establish intercooperative
14 public corporations for efficient compliance with applicable
15 federal and state laws, rules, and regulations relating to
16 discharges into and from municipal separate storm sewers; to
17 codify the Legislature's express intent in enacting Chapter
18 89C of Title 11 of the Code of Alabama 1975; to limit the
19 jurisdictional scope of local storm water management programs
20 created pursuant to Chapter 89C of Title 11 to include only
21 those sites discharging into municipal separate storm sewer
22 systems; to acknowledge EPA's "maximum extent practicable"
23 standard applicable to its municipal separate storm sewer
24 system program; to adhere to the tenets of Section 111.05 of
25 Article IV of the Constitution of Alabama of 1901, and the

1 limited authorities of self-governance conferred upon counties
2 pursuant to Chapters 3 and 3A of Title 11 of the Code of
3 Alabama 1975; to enact as enforceable law the proclamations of
4 the Legislature enumerated in House Joint Resolution 144
5 (1997), Act 97-931, by expressly limiting the substantive
6 scope of local storm water management programs created and
7 carried out pursuant to Chapter 89C of Title 11 to include
8 only those rules, regulations, and/or aspects that are
9 absolutely required to satisfy the Clean Water Act, as
10 specifically set out in the Code of Federal Regulations,
11 because the federal initiative upon which this regulatory
12 scheme is based is an unfunded mandate; to clarify that the
13 Alabama Department of Environmental Management (ADEM) shall
14 maintain primary permitting and enforcement responsibility for
15 all ADEM NPDES sites and that local storm water management
16 programs shall primarily rely upon ADEM for these functions,
17 to the fullest extent allowed by applicable state and federal
18 laws, rather than subjecting such sites to double regulation;
19 to establish the type of fees, charges, or assessments a
20 governing body and/or a public corporation established
21 pursuant to Chapter 89C shall levy and from whom such fees,
22 charges, or assessments shall be levied; and to exempt
23 discharges originating from any lands and/or facilities owned
24 and/or operated by commission non-jurisdictional electric
25 suppliers, as defined by Section 37-4-140, Code of Alabama

1 1975, by one or more entities under the jurisdiction and
2 supervision of the Alabama Public Service Commission, or such
3 entities' affiliates, from regulation under any local storm
4 water management program and declare that such discharges
5 shall be regulated exclusively by ADEM.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Sections 11-89C-1, 11-89C-2, 11-89C-4,
8 11-89C-9, and 11-89C-10 of the Code of Alabama 1975, are
9 amended to read as follows:

10 "§11-89C-1.

11 "(a) The Legislature finds and declares that it is
12 in the public interest and the health, safety, and welfare of
13 the citizens of this state and within the police power of the
14 state, county, and municipal governments to promote effective
15 and efficient compliance with federal and state laws, rules,
16 regulations, and ~~municipal~~ permits relating to ~~storm water~~
17 discharges into and from municipal separate storm sewers, and
18 to promote and authorize the discovery, control, and
19 elimination, wherever practicable, of that discharge at the
20 local government level.

21 "(b) It is the intention of the Legislature by
22 passage of this chapter to assist the state in its
23 implementation of the storm water laws, and to supplement the
24 authority of the governing bodies of all counties and

1 municipalities in the state to enable them to implement the
2 storm water laws.

3 "(c) It is further the intention of the Legislature
4 to authorize and promote the intercooperation of the governing
5 bodies in implementing the storm water laws and the purposes
6 of this chapter.

7 "(d) It is further the intention of the Legislature
8 to authorize governing bodies to determine the methods and
9 procedures they shall use to carry out the storm water laws
10 and this chapter, to make their respective participation in a
11 public corporation intercooperation program optional, and to
12 adopt policies and procedures pertaining to their
13 responsibilities in the program and the procedure for entry
14 into and exit from the program. It is the intention of the
15 Legislature to grant the governing bodies, whether in the
16 program or acting individually, the enforcement authority
17 needed in order to satisfy the requirements of storm water
18 laws, further, to act by resolution or ordinance enforceable
19 in their respective municipal courts or the district courts
20 and by civil procedures in district and circuit courts,
21 including fines, penalties, damages, and injunction as
22 authorized and appropriate. It is the intention of the
23 Legislature to grant governing bodies the authority to
24 determine their financial needs to fund the administration,
25 operations, and projects of the program, their individual

1 needs, and the methods to generate and collect the necessary
2 revenue and to authorize the use of the assessment, billing,
3 and collection capabilities and authority of the respective
4 county tax assessors and tax collectors for that purpose. It
5 is the intention of the Legislature that any public
6 corporations created pursuant to this chapter implement an
7 efficient and effective storm water program that promotes the
8 fullest public participation feasible.

9 "(e) It is further the intention of the Legislature
10 to limit the jurisdictional scope of local storm water
11 management programs to include only those sites discharging
12 into the municipal separate storm sewer system and, because
13 this federal initiative is an unfunded mandate, to limit the
14 substantive scope of such local programs to include only those
15 rules, regulations, and/or aspects that are absolutely
16 required to satisfy the Clean Water Act, as specifically set
17 out in the Code of Federal Regulations. It is the intention of
18 the Legislature to provide a funding mechanism to aid local
19 storm water management programs in meeting the financial
20 obligations imposed by this unfunded federal mandate provided
21 that the expenses of such programs are restrained by the
22 strict limitations on the scope of the programs to include
23 only those rules, regulations, and/or aspects that are
24 absolutely required to satisfy the Clean Water Act, as
25 specifically set out in the Code of Federal Regulations.

1 "(f) It is further the intention of the Legislature
2 for an individual governing body or public corporation to
3 primarily rely upon ADEM, to the fullest extent allowed by
4 applicable state and federal laws, for the permitting and
5 enforcement of all ADEM NPDES sites rather than subjecting
6 such sites to double regulation.

7 "§11-89C-2.

8 "As used in this chapter, the following words and
9 phrases shall have the following meanings:

10 "~~(1) GOVERNING BODY. The governing bodies of all~~
11 ~~Class 1 municipalities within the state and the county~~
12 ~~governing bodies in which the Class 1 municipalities are~~
13 ~~located and the governing bodies of all municipalities located~~
14 ~~within those counties, and where any such municipality is also~~
15 ~~located partially within an adjoining county, then the~~
16 ~~governing body of such adjoining county, and which governing~~
17 ~~bodies are specifically designated in 40 C.F.R. Part 122,~~
18 ~~Appendices F, G, H, or I or by ADEM pursuant to the authority~~
19 ~~delegated to it under the Clean Water Act, 33 U.S.C. Section~~
20 ~~1251 et seq., as of August 8, 1995.~~

21 "(1) AGRICULTURAL LAND. Any real property classified
22 or assessed as agricultural or forest land for property tax
23 purposes.

24 "(2) COMMERCIAL PROPERTY. Any real property that is
25 not residential property, as defined in this section, or has

1 not specifically been exempted from the fee provisions set out
2 in Section 11-89C-9(d)(1).

3 "(3) GOVERNING BODY. The governing body of a county
4 or municipality in the state which is now or may hereafter be
5 specifically designated in 40 C.F.R. Part 122, including, but
6 not limited to, any appendices or revisions promulgated by EPA
7 in conjunction with any expansion of the agency's municipal
8 separate storm sewer system program (e.g. Phase III, Phase IV,
9 and/or equivalent expansions), or by ADEM pursuant to the
10 authority delegated to it under the Clean Water Act, 33 U.S.C.
11 §1251 et seq.

12 "(4) GREENFIELD. Any real property not previously
13 developed.

14 ~~"(2)~~ (5) ILLICIT DISCHARGE. Any discharge to a
15 municipal separate storm sewer that is not composed entirely
16 of storm water, except discharges pursuant to an NPDES permit
17 (other than the NPDES permit for discharges from the municipal
18 separate storm sewer) and discharges resulting from fire
19 fighting and emergency management activities.

20 ~~"(3)~~ (6) MEMBER GOVERNING BODY. A governing body
21 that joins a public corporation established pursuant to this
22 chapter.

23 ~~"(4)~~ (7) MUNICIPAL SEPARATE STORM SEWER. A
24 conveyance or system of conveyances, including roads with

1 drainage systems, municipal streets, catch basins, curbs,
2 gutters, ditches, manmade channels, or storm drains:

3 "(i) Owned or operated by a city, town, county,
4 association, or other public body;

5 "(ii) Designed or used for collecting or conveying
6 storm water;

7 "(iii) Which is not a combined sewer; and

8 "(iv) Which is not part of a publicly owned
9 treatment works as defined in 40 C.F.R. §122.2.

10 "~~(5)~~ (8) PUBLIC CORPORATION. Any public corporation
11 created pursuant to this chapter.

12 "(9) RESIDENTIAL PROPERTY. Any single-family
13 owner-occupied residential property, historic buildings, or
14 sites classified or assessed as Class III property, pursuant
15 to Section 217 of Article XI of the Constitution of Alabama of
16 1901.

17 "~~(6)~~ (10) RULE. Any public corporation regulation or
18 standard of general applicability that prescribes or
19 recommends law, procedure or policy for its member governing
20 bodies specifically including all pro forma ordinances,
21 regulations, resolutions, rules, procedures or remedies
22 adopted and recommended by a public corporation.

23 "~~(7)~~ (11) STORM WATER DISCHARGE ASSOCIATED WITH
24 INDUSTRIAL ACTIVITY. The discharge from any conveyance which
25 is used for collecting and conveying storm water and which is

1 directly related to manufacturing, processing, or raw
2 materials storage areas at an industrial plant. The term does
3 not include discharges from facilities or activities excluded
4 from the NPDES program under 40 C.F.R. Part 122, but shall
5 include discharges from facilities which are included in the
6 categories of industries listed in 40 C.F.R. §122.26(b) (14) (i)
7 through (xi), inclusive, together with all subsequent
8 categories of industries which may be so designated in 40
9 C.F.R. §122.26(b) (14) by ~~the Environmental Protection Agency~~
10 ~~(EPA)~~ EPA.

11 ~~"(8)~~ (12) STORM WATER LAWS. Those provisions of the
12 Clean Water Act, 33 U.S.C. §1251 et seq., together with all
13 other and subsequent applicable federal and state laws, rules,
14 and regulations, as set out in applicable permits, and
15 ~~municipal permits~~ relating specifically to the control of ~~the~~
16 ~~pollution of storm water discharges to~~ into and from municipal
17 separate storm sewers, but specifically excluding any EPA
18 guidance and/or interpretations of said laws, rules, and/or
19 regulations not promulgated in accordance with the Alabama
20 Administrative Procedure Act or Administrative Procedure Act,
21 5 U.S.C. §500 et seq.

22 "§11-89C-4.

23 "(a) Any When expressly required to comply with
24 storm water laws, any public corporation created pursuant to
25 this chapter shall have the following powers:

1 "(1) To establish, maintain, and operate an
2 organizational structure pursuant to this chapter, its
3 original or amended certification, and its bylaws or other
4 rules of procedure, that will enable it to implement the storm
5 water laws for and on behalf of any governing body that
6 exercises the option to participate in or with a public
7 corporation, ~~however, except~~ provided that no new or greater
8 authorities or powers other than those specifically granted to
9 the governing bodies are conferred upon any public corporation
10 formed pursuant to this chapter. Except for the authority
11 provided in subdivision (20), authority to enforce the storm
12 water laws is retained wholly and exclusively to the governing
13 bodies and may not be further delegated to or assumed by the
14 public corporation, its agents or employees.

15 "(2) To establish the procedure by which a ~~member~~
16 governing body may elect to join the public corporation and by
17 which a member governing body may elect to withdraw from the
18 public corporation.

19 "(3) To establish a board of directors to serve as
20 the governing body of the corporation to establish policy and
21 procedure for the corporation. The board shall consist of one
22 representative from each member governing body. The
23 representative shall be the mayor, if the member governing
24 body is a governing body of a municipality, or a county
25 commissioner, if the member governing body is a governing body

1 of a county. The board shall designate at least three members,
2 and no more than five members, to serve as an executive
3 committee to perform the executive and administrative
4 functions of the corporation. The executive committee shall
5 include one county commissioner from the largest county member
6 governing body, if there is one, and at least two mayors. If
7 there is no county member governing body, there shall be at
8 least three mayors; or if there are no participating
9 municipalities, there shall be at least three county
10 commissioners, representing different counties. The board
11 shall elect one executive committee member as chair, one as
12 co-chair, and one as secretary. Individual board and executive
13 committee members shall serve without compensation, but shall
14 be entitled to reasonable actual expenses that are properly
15 documented and authorized. All other needed organizational
16 matters, bylaws, rules of procedure, and officers shall be
17 determined by the board of directors.

18 "(4) To employ individuals directly or indirectly
19 through loaned, detailed, or assigned employees from the
20 member governing bodies or other entities. Employees directly
21 employed by the public corporation shall be eligible to
22 participate in the employee benefit programs of any member
23 governing body, including insurance and pension programs, upon
24 approval of the executive committee and the subject member
25 governing body.

1 "(5) To enter into contracts with individuals,
2 governing bodies, member governing bodies, governmental
3 agencies, professional associations, corporations,
4 partnerships, and other legal entities to implement the
5 functions of this chapter.

6 "(6) To purchase, lease, license, own, or otherwise
7 acquire real and personal property, including easements,
8 rights of way, and all other interests in land, including
9 municipal separate storm sewers, buildings, and other
10 facilities and equipment.

11 "(7) To construct, operate, maintain, repair, and
12 replace facilities for storm water functions.

13 "(8) To contract with member governing bodies for
14 the construction, improvement, renovation, management, or
15 operation of their municipal separate storm sewer systems.

16 "(9) To purchase or obtain insurance and other
17 appropriate tangibles and intangibles.

18 "(10) To apply for, solicit, and otherwise obtain
19 and receive from any governmental, public, or private source,
20 grants, contributions, and donations, of money, all forms of
21 property, equipment, supplies, services, and labor.

22 "(11) To hold and invest its moneys in all legal
23 forms of investment for fiduciaries.

1 "(12) To salvage, lend, lease, or sell by cash or
2 installment, with or without interest, its lands, interest in
3 land, facilities, equipment, and other property.

4 "(13) To undertake or participate in studies,
5 surveys, analyses, or investigations of storm water runoff and
6 other functions of the storm water laws and this chapter.

7 "(14) To adopt necessary and appropriate policies,
8 procedures, rules, and regulations applicable to the member
9 governing bodies ~~in accordance with EPA and/or ADEM permits~~
10 ~~and rules and regulations~~ to implement the storm water laws
11 ~~and the functions of~~ in accordance with this chapter.

12 "(15) To develop and hold public hearings on pro
13 forma resolutions or ordinances, or both, which may be adopted
14 by any member governing body to implement this chapter.

15 "(16) To develop pro forma remedies and procedures
16 for the enforcement of resolutions or ordinances, or both,
17 adopted to implement this chapter.

18 "(17) To sue and be sued, except as immunized
19 hereby, in its own name and to appear in all administrative
20 forums.

21 "(18) To establish the cost, charges, fees, or
22 assessments as required of the member governing bodies for
23 participation in the public corporation, necessary to fund the
24 operation, activities, projects, and facilities of the
25 corporation.

1 "(19) ~~To~~ In accordance with the provisions of
2 Section 11-89C-10, to establish the procedure for the
3 assessment and collection by the tax assessor and tax
4 collector of the respective counties or other public official
5 performing those functions, of any fees, charges, or
6 assessments levied by a member governing body.

7 "(20) To authorize any officer, employee, or other
8 agent of the public corporation to enter upon private or
9 public property under the regulatory jurisdiction of one or
10 more of its member governing bodies during normal business
11 hours and upon the presentation of appropriate credentials for
12 the purpose of performing investigations regarding the
13 existence and source of contamination, and determining from
14 the owner or other appropriate individual the methods they
15 will employ to stop, neutralize, remove, or otherwise remedy
16 the contamination. Any officer, employee, or other authorized
17 agent who performs the duties authorized under this section in
18 accordance with provisions hereof shall be immune from arrest
19 and prosecution for trespass in performing any legal duty
20 pursuant to this chapter by presenting identification issued
21 or authorized by the public corporation.

22 "(21) To do any and all things necessary or
23 convenient to implement and administer this chapter.

1 "(b) In the development of any rule or procedures
2 for the enforcement of such, any public corporation created
3 pursuant to this chapter shall do all of the following:

4 "(1) Set a date and time for a public hearing and
5 afford the public and interested parties an opportunity to
6 offer written comments, and to present testimony and evidence
7 in support of their respective positions as to the proposed
8 resolutions, ordinances, remedies, or procedures and may have
9 counsel to represent them at their own expense. The board of
10 the corporation shall consider fully all written and oral
11 submissions presented. At the conclusion of this hearing and
12 any continuation thereof, the board of the corporation may
13 modify or withdraw such proposals or may adopt such pro forma
14 resolutions, ordinances, remedies, or procedures which are
15 reasonable and supported by evidence from the proposal itself,
16 the public comments submitted thereupon and the public hearing
17 record and which shall be thereafter presented to the member
18 municipal or county governing bodies, or both, for their
19 consideration. Adoption of any rule shall require an
20 affirmative vote of at least two-thirds (2/3) of the members
21 of the board of the corporation. ~~Upon~~ No later than 30 days
22 following the adoption of a rule, the public corporation shall
23 issue a statement reflecting the reasoning and evidence
24 supporting adoption of the rule and an explanation for

1 rejecting the evidence or assertions made urging modification
2 or withdrawal of the rule.

3 "(2) Give notice of the hearing by publishing in a
4 newspaper of general circulation published within the county
5 in which the corporation members exist at least ~~30~~ 45 days
6 prior to the date of the hearing stating the date, time, and
7 location of the hearing, and including either the terms or the
8 substance of the proposals to be considered or a description
9 of the subjects and issues involved, the address of the
10 location where copies of the proposed resolution, ordinances,
11 remedies and procedures may be inspected or copies thereof
12 obtained, and the manner in which interested persons may
13 present their views thereon. Every proposed rule shall be
14 accompanied by a thorough statement identifying and explaining
15 the purpose and support for its adoption. The notice shall
16 also be timely delivered by electronic means (i.e., email
17 notification) to all persons who have made timely request of
18 the corporation in advance for advance electronic notice of
19 any such hearings and timely mailed to all persons who pay the
20 cost of the mailing and who have made timely request of the
21 corporation in advance for advance notice by mail of any such
22 hearings.

23 "(3) Make available for public inspection and
24 copying, at cost, any such proposed resolutions, ordinances,

1 remedies, and procedures at least thirty (30) days prior to
2 the hearing.

3 "(c) The governing bodies shall satisfy all
4 statutory requirements applicable to the respective governing
5 bodies for adoption of ordinances, including notice and public
6 hearing, before adopting any such pro forma resolutions,
7 ordinances, remedies, and procedure, however, adoption by a
8 member governing body of any ordinance or resolution
9 recommended by the board of the public corporation or
10 authorized by this statute shall require an affirmative vote
11 of at least a majority of the members of the council or
12 commission authorized to adopt such ordinances or resolutions
13 in the governing body.

14 "§11-89C-9.

15 "(a) A governing body ~~may~~ shall proceed under this
16 chapter as a participant in the public corporation or
17 individually, to adopt upon reasonable public notice and
18 following public hearing all necessary rules and regulations
19 by resolution or ordinance to implement this chapter and to
20 specifically regulate and control storm water discharges and
21 eliminate the discharge of pollutants to its municipal
22 separate storm sewers. Provided, however, that all discharges
23 originating from any lands and/or facilities owned and/or
24 operated by one or more entities under the jurisdiction and
25 supervision of the Alabama Public Service Commission are

1 exempted from regulation under any local storm water
2 management program and shall be regulated exclusively by ADEM.
3 Further, any commission non-jurisdictional electric supplier,
4 as defined by Section 37-4-140, whose service area extends
5 beyond the boundaries of a single municipal or county
6 jurisdiction shall be exempted from the regulation of
7 electrical transmission-related construction activities under
8 any local storm water management program and shall be
9 regulated exclusively by ADEM. The rules and regulations
10 adopted pursuant to this chapter shall be ~~in accordance with~~
11 ~~those contained in the EPA NPDES program; however, the rules~~
12 ~~and regulations shall not impose any additional requirements~~
13 ~~than those mandated by the EPA. In limited to include only~~
14 ~~those rules, regulations, and/or aspects that are absolutely~~
15 ~~required to satisfy the storm water laws. In establishing~~
16 ~~these rules and regulations, an individual governing body or~~
17 ~~public corporation shall, to the fullest extent allowed by~~
18 ~~applicable storm water laws, primarily rely upon ADEM for the~~
19 ~~enforcement and permitting of discharges to its municipal~~
20 ~~separate storm sewers from sites required to have an ADEM~~
21 ~~NPDES permit, rather than subjecting these sites to double~~
22 ~~enforcement or permitting. Consistent with and in furtherance~~
23 ~~of these objectives, the governing bodies may do all of the~~
24 following:

1 "(1) Control by resolution, ordinance, contract,
2 order, or similar means the discharge of pollutants to its
3 municipal separate storm sewers by storm water discharges
4 associated with industrial activity and the quality of storm
5 water discharged from sites of industrial activity.

6 "(2) Prohibit by resolution, ordinance, order, or
7 similar means illicit discharges to its municipal separate
8 storm sewers.

9 "(3) Control by resolution, ordinance, order, or
10 similar means the discharge to its municipal separate storm
11 sewers of spills, dumping, or disposal of materials other than
12 storm water.

13 "(4) Control by interagency or intercooperation
14 agreements among the governing bodies and other entities the
15 discharge of pollutants from one portion of its municipal
16 storm water system to another portion.

17 "(5) Require compliance with conditions in
18 resolutions, ordinances, contracts, or orders.

19 "(6) Enter upon private property under its
20 regulatory jurisdiction upon reasonable notice to the owner
21 and the person in possession thereof and during normal
22 business hours and upon the presentation of appropriate
23 credentials for the purpose of performing investigations
24 regarding the existence and source of contamination and
25 determining from the owner or other appropriate individual the

1 methods which they will employ to stop, neutralize, remove, or
2 otherwise remedy the contamination, and as needed to determine
3 compliance or non-compliance with permit conditions, including
4 any prohibition of illicit discharges to its municipal
5 separate storm sewers. Any officer, employee, or other
6 authorized agent who performs the duties authorized under this
7 section in accordance with provisions hereof shall be immune
8 from arrest and prosecution for trespass while performing any
9 legal duty pursuant to this chapter by presenting
10 identification issued from the county or municipality
11 authorized by the governing bodies.

12 "(b) The governing bodies may develop and adopt
13 common and uniform or partly common and partly uniform
14 resolutions, ordinances, contracts, orders, or similar means
15 in their respective actions and procedures to implement this
16 chapter.

17 "(c) Any governing body may join with any other
18 governing body to establish or participate in or with a public
19 corporation, or with any other public corporation, authority,
20 or district authorized by the Legislature to implement this
21 chapter. In furtherance of this objective, any governing body
22 may perform any of the functions and powers provided in
23 Section 11-89C-4 for public corporations, and any function or
24 eligibility requirement provided or required for joining and
25 participating, and to transfer and convey to the public

1 corporation, with or without consideration, any facilities,
2 real or personal property, money, or thing of value, including
3 the services of employees through loan, detail, or assignment.

4 "(d) Any governing body may establish, levy, and
5 impose by resolution or ordinance, any revenue-raising measure
6 within its jurisdiction, including, but not limited to, fees,
7 charges, or assessments, without any referendum unless
8 required by the Constitution of Alabama of 1901, deemed
9 necessary to implement this chapter or to comply with all
10 provisions of storm water laws, subject to the following:

11 "(1) A governing body shall not establish, levy, or
12 impose fees, charges, or assessments from or against owners
13 and/or operators of lands and/or facilities exempted from
14 regulation under any local storm water management program, as
15 set out in Section 11-89C-9(a), owners of greenfields, and/or
16 owners of agricultural land, pursuant to this subpart;

17 "(2) A governing body may only establish, levy, or
18 impose an annual flat fee, charge, or assessment of no more
19 than ten dollars (\$10) from or against owners of residential
20 property, pursuant to this subpart; and

21 "(3) A governing body may only establish, levy, or
22 impose an annual fee, charge, or assessment from or against
23 owners of commercial property of no more than one-half of one
24 cent (\$0.005) per square foot of commercial space on or within
25 the property, pursuant to this subpart, provided that,

1 regardless of actual square footage of commercial space on or
2 within the property, no such annual fee, charge, or assessment
3 shall exceed three thousand dollars (\$3,000). Any such fee,
4 charge, or assessment may be levied and collected in any
5 manner permissible by law. ~~In addition, any such measure may~~
6 ~~include incentive provisions including reductions of waiver of~~
7 ~~all or part of such fee, charge, or assessment where the~~
8 ~~responsible entity constructs, installs, or otherwise employs~~
9 ~~or utilizes any structure, service, equipment, or system to~~
10 ~~reduce or eliminate storm water pollution.~~ Any governing body
11 may call upon and enter into agreements with the respective
12 tax assessor and tax collector or other public official
13 performing the function of the tax assessor and tax collector
14 to assess and collect any such fees, charges, or assessments.

15 "(e) Any governing body may establish by resolution
16 or ordinance necessary enforcement measures and procedures for
17 the enforcement of rules, regulations, resolutions,
18 ordinances, or orders through actions before a municipal,
19 district or circuit court of competent jurisdiction, including
20 penalties for violations in accordance with Section 11-45-9.

21 "(f) Any governing body may institute a civil suit
22 for damages or injunctive relief, except as limited by Section
23 11-89C-11 and Section 11-89C-12, in any district or circuit
24 court having jurisdiction for a violation of this chapter.
25 Damages may include all costs, expenses, or other losses

1 resulting directly or indirectly from a violation of any rule,
2 regulation, resolution, ordinance, order, or other provision
3 authorized by this chapter, and may include attorney's fees,
4 court costs, and trial expenses.

5 "(g) A governing body may do any and all things,
6 whether or not specifically or expressly authorized in this
7 section or chapter, not otherwise prohibited by law, that are
8 necessary and convenient to do individually, and to aid and
9 cooperate with the public corporation or other entity in
10 carrying out the storm water laws and the purposes and intent
11 of this chapter.

12 "§11-89C-10.

13 "(a) The tax assessor and the tax collector, or
14 other public official performing the functions of the tax
15 assessor and tax collector, of every county in this state
16 shall, upon request, implement procedures necessary and
17 appropriate in order to assess and collect the fees, charges,
18 or assessments levied in accordance with Section 11-89C-9(d)
19 by any governing body or member governing body, ~~whether or not~~
20 ~~related to the value of any land.~~

21 "(b) The fees, charges, or assessments shall be a
22 lien upon any land to which it may be levied, and shall be
23 assessed, collected, and enforced as are other ad valorem
24 taxes. Each county collecting such fee, charge, or assessment
25 shall receive a ~~two~~ one percent commission on all amounts

1 ~~levied and~~ collected which shall be deposited to the county
2 general fund.

3 "(c) On a quarterly basis not later than the 20th
4 day of January, April, July, and October, every governing body
5 shall remit five percent (5%) of all fees collected pursuant
6 to Section 11-89C-9(d) to the Department of Revenue. The
7 Department of Revenue shall timely transfer ninety-five
8 percent (95%) of the fees it receives to the State Treasury to
9 the credit of ADEM to be used exclusively to pay the costs of
10 performing its duties to carry out applicable programs
11 pursuant to the storm water laws. The Department of Revenue
12 shall retain the remaining five percent (5%) of the fees it
13 receives as an administrative collection allowance."

14 Section 2. Section 11-89C-15 is added to the Code of
15 Alabama 1975, to read as follows:

16 §11-89C-15.

17 (a) No later than 365 days after the effective date
18 of the 2014 amendments to this chapter, ADEM shall initiate
19 all actions necessary to revise its applicable regulations to
20 comply with and/or adhere to the 2014 amendments. As soon as
21 practicable following the promulgation of any necessary
22 revisions to its applicable regulations, ADEM shall bring its
23 NPDES permits into conformity with the revised regulatory
24 provisions. ADEM shall timely notify the governing bodies and
25 any existing public corporations formed pursuant to this

1 chapter of the date upon which the agency completed its
2 obligations pursuant to this subpart.

3 (b) All governing bodies and any existing public
4 corporations formed pursuant to the provisions of this chapter
5 shall complete all actions necessary to comply with and/or
6 adhere to the 2014 amendments no later than 90 days after the
7 date upon which ADEM fulfilled its obligations pursuant to
8 subpart (a), regardless of when the notice required by subpart
9 (a) is actually received by any governing body or existing
10 public corporation.

11 Section 3. The provisions of this act are declared
12 to be severable and if any chapter, part, section, paragraph,
13 subparagraph, subdivision, clause, or phrase of this act shall
14 be adjudged to be invalid or unconstitutional by any court of
15 competent jurisdiction, the judgement shall not affect,
16 impair, or invalidate the remainder of this act, but shall be
17 confined in its operation to the chapter, part, section,
18 paragraph, subparagraph, subdivision, clause or phrase of this
19 act that shall be directly involved in the controversy in
20 which such judgment shall have been rendered.

21 Section 4. This act shall become effective
22 immediately following its passage and approval by the
23 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB355

Senate 19-MAR-14

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

Patrick Harris
Secretary

House of Representatives
Passed: 03-APR-14

By: Senator Ward