

1 SB218
2 189548-2
3 By Senator Orr
4 RFD: Transportation and Energy
5 First Read: 25-JAN-18

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8 SYNOPSIS: Under existing law, a railroad authority may
9 be created by filing a certificate of
10 incorporation, approved by the governing bodies of
11 those counties and municipalities where railroad
12 properties are located at the time of
13 incorporation, with the probate judge in the county
14 in which the principal office of the authority is
15 to be located. Existing law further provides for
16 membership of the board of directors of a railroad
17 authority to consist of individuals elected from
18 the governing bodies where railroad properties are
19 located at the time of incorporation.

20 This bill would authorize an existing
21 railroad authority to amend its certificate of
22 incorporation by the board of directors of the
23 authority without the consent of any governing body
24 of a county or municipality.

25 This bill would also authorize a county
26 commission of a county where a railroad authority
27 owns, leases, or controls railroad property, but

1 did not own, lease, or control railroad property at
2 the time of incorporation, to elect two additional
3 members to serve on the board of directors of the
4 railroad authority.

5
6 A BILL
7 TO BE ENTITLED
8 AN ACT

9
10 Relating to railroad authorities; to amend Sections
11 37-13-1, 37-13-4, 37-13-5, and 37-13-7, Code of Alabama 1975;
12 to authorize an existing railroad authority to amend its
13 certificate of incorporation without the consent of any
14 governing body of a county or municipality; and to authorize a
15 county commission of a county where a railroad authority owns,
16 leases, or controls railroad property, but did not own, lease,
17 or control railroad property at the time of incorporation, to
18 elect two additional members to serve on the board of
19 directors of the railroad authority.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 37-13-1, 37-13-4, 37-13-5, and
22 37-13-7, Code of Alabama 1975, are amended to read as follows:

23 "§37-13-1.

24 "When used in this chapter, unless the context
25 plainly indicates otherwise, the present tense shall include
26 the future tense, the singular shall include the plural, the
27 plural shall include the singular and the following words and

1 phrases shall have the meanings respectively ascribed to them
2 by this section.

3 "(1) ADDITIONAL RAIL SERVICE AREA. Any territory
4 that is outside the boundaries or corporate limits, as the
5 case may be, of any of its authorizing subdivisions and that
6 the governing body of the county, and of any city or town, in
7 which such territory is located has by resolution designated
8 as an area in which the authority may render rail
9 transportation service.

10 "(2) AUTHORITY. Any public corporation organized
11 pursuant to this chapter or any law amendatory thereof or
12 supplemental thereto.

13 "(3) AUTHORIZING SUBDIVISION. Any county, city, or
14 town in this state in which there are located railroad
15 properties and facilities and whose governing body receives an
16 application for permission to organize an authority.

17 "(4) BOARD. The board of directors of an authority.

18 "(5) BOND. Any bond authorized to be issued pursuant
19 to this chapter.

20 "(6) COUPON. Any interest coupon evidencing an
21 installment of interest payable with respect to a bond.

22 "(7) DIRECTOR. A member of a board.

23 "(8) FEDERAL GOVERNMENT. The United States of
24 America or any department, division, commission, or agency and
25 instrumentality thereof, including, without limitation, the
26 Department of Transportation.

1 "(9) INDENTURE. A mortgage, an indenture of
2 mortgage, deed of trust, trust agreement, or trust indenture
3 executed by an authority as security for bonds.

4 "(10) PERSON. An individual, a corporation, a
5 partnership, or a foreign domestic association.

6 "(11) QUALIFYING COUNTY. A county in which railroad
7 properties and facilities that are owned, leased, or otherwise
8 controlled by an authority organized pursuant to this chapter
9 are currently located but excludes any county considered an
10 authorizing subdivision at the time of incorporation.

11 "~~(11)~~(12) RAILROAD. A common carrier by railroad as
12 defined in Section 1(3) of Part I of the Interstate Commerce
13 Act, codified as 49 U.S.C. §1(3).

14 "~~(12)~~(13) RAILROAD PROPERTIES AND FACILITIES. Any
15 real or personal property or interest in such property which
16 is owned, leased, or otherwise controlled by a railroad or
17 other person, including, without limitation, an authority, and
18 which is used or is useful in rail transportation service,
19 including, without limiting the generality of the foregoing:

20 "a. Track, roadbed, and related structures,
21 including rail, ties, ballast, other track materials, grading,
22 tunnels, bridges, trestles, culverts, elevated structures,
23 stations, office buildings used for operating purposes only,
24 repair shops, engine houses, and public improvements used or
25 useful in providing rail transportation service;

26 "b. Communication and power transmission systems for
27 use by railroads;

1 "c. Signals and interlockers;

2 "d. Terminal or yard facilities and services to
3 express companies, railroads and their shippers, including
4 ferries, tugs, car floats, and related shoreside facilities
5 designed for the transportation of equipment by water; and

6 "e. Shop or repair facilities or any other property
7 used or capable of being used in providing rail transportation
8 service or in connection with such service or for originating,
9 terminating, improving, and expediting the movement of
10 equipment or goods.

11 "~~(13)~~ (14) RAIL TRANSPORTATION SERVICE. Both freight
12 and passenger rail service.

13 "~~(14)~~ (15) STATE. The State of Alabama.

14 "§37-13-4.

15 "(a) ~~The certificate of incorporation of an~~
16 ~~authority shall be signed and acknowledged by the aforesaid~~
17 ~~incorporators before an officer authorized by the laws of the~~
18 ~~state to take acknowledgements to deeds and shall have~~
19 ~~attached thereto a certified copy of each of the resolutions~~
20 ~~provided for in Section 37-13-2 and Once all the appropriate~~
21 ~~governing bodies have approved the certificate of~~
22 ~~incorporation as provided in Section 37-13-2, the persons~~
23 ~~seeking incorporation shall file in the office of the judge of~~
24 ~~probate of the county in which the principal office of the~~
25 ~~authority is to be located the certificate of incorporation,~~
26 ~~along with a certificate by the ~~secretary of state~~ Secretary~~
27 ~~of State certifying that the name proposed for the authority~~

1 is not identical to that of any other corporation organized
2 under the laws of the state or so nearly similar thereto as to
3 lead to confusion and uncertainty. ~~The certificate of~~
4 ~~incorporation of an authority, together with the documents~~
5 ~~required by the preceding sentence to be attached thereto,~~
6 ~~shall be filed for record in the office of the judge of~~
7 ~~probate of the county in which the principal office of the~~
8 ~~authority shall be located.~~ The judge of probate shall
9 forthwith receive and record the same. When such a certificate
10 of incorporation and attached documents have been so filed,
11 the authority referred to therein shall come into existence
12 and shall constitute a public corporation under the name set
13 forth in such certificate of incorporation, whereupon the
14 authority shall be vested with the rights and powers herein
15 granted.

16 "(b) The board of directors of an authority may
17 amend the certificate of incorporation by majority vote of all
18 directors without the consent of any governing body of an
19 authorizing subdivision or qualifying county. The amendatory
20 language shall take effect once the amended certificate of
21 incorporation is filed with the judge of probate of the county
22 where the original certificate of incorporation was filed.

23 "§37-13-5.

24 "(a) Each authority shall be governed by a board of
25 directors composed of the number of directors provided in its
26 certificate of incorporation, all of whom shall be selected in
27 accordance with the provisions of this section. If there is to

1 be only one authorizing subdivision (whether a county, city or
2 town), the governing body of the authorizing subdivision shall
3 elect all the directors. If there is to be more than one
4 authorizing subdivision, the respective governing bodies of
5 the authorizing subdivisions shall each elect the same number
6 of directors; and one additional director shall be elected
7 jointly by the governing bodies of all the authorizing
8 subdivisions. Each director shall be a resident of the
9 authorizing subdivision by whose governing body he or she was
10 elected, except that the ~~said~~ additional director need only be
11 a resident of the county in which is located the principal
12 office of the authority, as specified in its certificate of
13 incorporation. In the event of a vacancy which continues for
14 more than 30 days in the office of the ~~said~~ additional
15 director, ~~then and in such event~~ the Governor ~~of Alabama~~
16 ~~shall~~, upon the request of the governing body of any ~~authority~~
17 authorizing subdivision, shall appoint the ~~said~~ additional
18 director.

19 "(b) In addition to the directors described in
20 subdivision (a) and notwithstanding its certificate of
21 incorporation, the county commission of a qualifying county
22 may elect at any time, by resolution, two additional directors
23 to serve on the board of the authority, whose terms shall
24 begin immediately. Each director shall be a resident of the
25 respective qualifying county. The directors shall serve terms
26 of the same duration as the directors described in subsection
27 (a) as specified in the certificate of incorporation.

1 "(c) No officer of the state or any county,~~city or~~
2 ~~town therein shall~~ or municipality, while holding such office,
3 shall be eligible to serve as a director. If any director
4 resigns, dies or becomes incapable or ineligible to act as a
5 director, a successor to serve the unexpired portion of his or
6 her term shall be elected in the manner prescribed ~~hereinabove~~
7 in subsection (a) or (b) by the appropriate governing body ~~of~~
8 ~~the authorizing subdivision which~~ or bodies that elected the
9 director whose unexpired term he or she is filling. ~~or, in the~~
10 ~~case of the said additional director, by all such governing~~
11 ~~bodies. Failing such election for a period of more than 30~~
12 ~~days, such~~ If a new director is not elected within 30 days of
13 a vacancy, a successor, shall, upon the request of the
14 appropriate governing body, shall be appointed by the ~~governor~~
15 ~~of the state~~ Governor. Directors shall be eligible for
16 re-election.

17 "(d) A majority of the directors shall constitute a
18 quorum for the transaction of business but any meeting of the
19 board may be adjourned from time to time by a majority of the
20 directors present or may be so adjourned by a single director
21 if ~~such~~ the director is the only director present at such
22 meeting. No vacancy in the membership of the board shall
23 impair the right of a quorum to exercise all the powers and
24 duties of the authority. The board shall hold regular meetings
25 on the second Tuesday in each month and at such other times as
26 may be provided in the bylaws of the authority; and the board
27 may hold other meetings at any time and from time to time,

1 provided that upon call of the chairman of the authority or
2 any two directors, a special meeting of the board must be
3 held. Any matter on which the board is authorized to act may
4 be acted upon at any regular, special, or called meeting. At
5 the request of any director, the vote on any question before
6 the board shall be taken by yeas and nays and entered upon the
7 record. All proceedings of the board shall be reduced to
8 writing by the secretary of the authority, recorded in a well
9 bound book and open to each director and to the public at all
10 reasonable times. Copies of such proceedings, when certified
11 by the secretary of the authority under its seal, shall be
12 received in all courts as evidence of the matters and things
13 therein certified.

14 "(e) Directors shall receive no compensation for
15 their services as directors; however, each director may be
16 reimbursed for expenses actually incurred by him in and about
17 the performance of his or her duties. Any director may be
18 impeached and removed from office in the same manner and on
19 the same grounds provided by Section 175 of the Constitution
20 of Alabama and the general laws of the state for impeachment
21 and removal of the officers mentioned in ~~said~~ Section 175.

22 "§37-13-7.

23 "Each authority shall have the following powers,
24 together with all powers incidental thereto or necessary to
25 the discharge thereof in corporate form7.

1 "(1) To have succession by its corporate name for
2 the duration of time (which may be in perpetuity) specified in
3 its certificate of incorporation~~7~~.

4 "(2) To sue and be sued in its own name in civil
5 suit and actions~~7~~.

6 "(3) To adopt and make use of a corporate seal and
7 to alter the same at pleasure~~7~~.

8 "(4) To adopt and alter bylaws for the regulation
9 and conduct of its affairs and business;~~7~~.

10 "(5) To amend its certificate of incorporation in
11 accordance with Section 37-13-4.

12 "~~(5)~~(6) To acquire, receive, take and hold, whether
13 by purchase, gift, lease, devise, or otherwise, property of
14 every description, whether real, personal or mixed, whether in
15 one or more counties and whether within or without the
16 boundaries or corporate limits, ~~7~~ (as the case may be) ~~7~~ of any
17 authorizing subdivision, and to manage said property, and to
18 develop any undeveloped property owned, leased, ~~7~~ or controlled
19 by it in a manner necessary or convenient to carry out the
20 purposes of this chapter~~7~~.

21 "~~(6)~~(7) To execute such contracts and other
22 instruments and to take such other action as may be necessary
23 or convenient to carry out the purposes of this chapter or the
24 exercise of any power granted hereunder~~7~~.

25 "~~(7)~~(8) To plan, establish, acquire, ~~7~~ (by purchase,
26 gift, lease, or devise) ~~7~~, construct, enlarge, reconstruct,
27 improve, operate, maintain, replace, repair, extend, improve,

1 regulate, and protect railroad properties and facilities
2 within the boundaries or corporate limits, (as the case may
3 be) of any of its authorizing subdivisions and within any
4 additional rail service area.

5 ~~"(8)~~ (9) To make the use and services of its railroad
6 properties and facilities available to others in the
7 furtherance of the purposes of this chapter and upon such
8 terms and conditions as the board shall deem proper, and to
9 lease such railroad properties and facilities to others upon
10 such terms and conditions as the board may determine, unless
11 specifically provided for herein.

12 ~~"(9)~~ (10) To receive and accept contributions,
13 grants, or other financial assistance from the federal
14 government, the state, or any political subdivision thereof,
15 to be used in furtherance of the purposes of this chapter.

16 ~~"(10)~~ (11) To establish schedules of tolls, fees,
17 rates, charges, and rentals for the use of its railroad
18 properties and facilities and to charge, alter, and collect
19 such tolls, fees, rates, charges, and rentals in carrying out
20 the provisions of this chapter.

21 ~~"(11)~~ (12) To make contracts and execute instruments
22 containing such covenants, terms, and conditions as in the
23 judgment of the board may be necessary, proper, or advisable
24 for the purpose of obtaining grants, loans, or other financial
25 assistance from any federal or state agency for or in the aid
26 of the acquisition or improvement of the railroad properties
27 and facilities herein provided; to make all other contracts

1 and execute all other instruments including, without
2 limitation, licenses, long and short-term leases, mortgages
3 and deeds of trust and other agreements relating to the
4 railroad properties and facilities within the boundaries or
5 corporate limits, (as the case may be) of any of its
6 authorizing subdivisions and within any additional rail
7 service area, and the construction, operation, maintenance,
8 repair, and improvement thereof as in the judgment of the
9 board may be necessary, proper, or advisable for the
10 furtherance of the purposes of this chapter and the full
11 exercise of the powers herein granted; and to carry out and
12 perform the covenants, terms, and conditions of all such
13 contracts or instruments .

14 "~~(12)~~ (13) To acquire, by purchase, gift, devise, or
15 lease, existing railroad properties and facilities, whether in
16 one or more counties and whether within or without the
17 boundaries or corporate limits, (as the case may be) of any
18 of its authorizing subdivisions .

19 "~~(13)~~ (14) To issue revenue bonds payable from the
20 limited sources hereinafter referred to .

21 "~~(14)~~ (15) To pledge for payment of such bonds any
22 revenues and funds from which such bonds are made payable .

23 "~~(15)~~ (16) To make and enter into contracts, leases,
24 and agreements incidental to or necessary for the
25 accomplishment of any purposes for which the authority was
26 organized .

1 "~~(16)~~(17) To exercise the power of eminent domain in
2 the manner and subject to the provisions of Title 18 as
3 amended, with respect to any property, real, personal, or
4 mixed, whether in one or more counties and whether within or
5 without the boundaries or corporate limits, (as the case may
6 be) of any authorizing subdivision; provided, that the
7 authority may not acquire by eminent domain any real property
8 or rights owned or held by railroads, transportation
9 companies, or utilities, either public or private.

10 "~~(17)~~(18) To appoint, employ, contract with, and
11 provide for compensation of such officers, employees, and
12 agents, including engineers, attorneys, consultants, fiscal
13 advisers, and such other employees as the business of the
14 authority may require, including the power to fix working
15 conditions by general rule and other conditions of employment,
16 and at its option to provide a system of disability pay,
17 retirement compensation and pensions, or any of them, and to
18 hire and fire servants, agents, employees, and officers at
19 will.

20 "~~(18)~~(19) To provide for such insurance, including
21 use and occupancy insurance, as the authority may deem
22 advisable.

23 "~~(19)~~(20) To invest any funds of the authority that
24 the board may determine are not presently needed for its
25 corporate purposes in any obligations which are direct general
26 obligations of the United States of America or which are
27 unconditionally guaranteed as to both principal and interest

1 by the United States of America, or in interest-bearing time
2 deposits of any bank or savings and loan association organized
3 under the laws of the state or of the United States of
4 America~~7~~.

5 "~~(20)~~ (21) To cooperate with the state, any county,
6 city, town, public corporation, agency, department, or
7 political subdivision of the state, and to make such contracts
8 with them or any of them as the board may deem advisable to
9 accomplish the purposes for which the authority was
10 established~~7~~.

11 "~~(21)~~ (22) To sell and convey any of its properties
12 that may have become obsolete or worn out or that may no
13 longer be needed or useful~~7~~.

14 "~~(22)~~ (23) To receive and accept grants for or in aid
15 of the construction, extension, improvement, maintenance~~7~~ or
16 operation of any railroad properties and facilities from the
17 United States of America or any agency thereof, and from the
18 state, any department or agency thereof~~7~~, and any political
19 subdivision thereof, and to receive and accept money,
20 property, labor~~7~~, or other things of value from any source
21 whatever~~7~~ and.

22 "~~(23)~~ (24) To purchase equipment and supplies
23 necessary or convenient for the exercise of any power of the
24 authority."

25 Section 2. This act shall become effective on the
26 first day of the third month following its passage and
27 approval by the Governor, or its otherwise becoming law.

