

Senate Judiciary Engrossed Substitute for SB27



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SYNOPSIS: This bill would further provide for the powers of the authority.

This bill would also exempt certain agricultural authorities from municipal ordinances or regulations without the consent of the authority.

A BILL
TO BE ENACTED
AN ACT

Relating to agriculture authorities; to amend Section 11-20-71, Code of Alabama 1975, to authorize the board of directors of an authority to appoint former members of the board as directors emeritus to serve as goodwill ambassadors of the board; to amend Section 11-20-73, Code of Alabama 1975, to further provide for the powers of the authority; and to amend Section 11-20-80, Code of Alabama 1975, to exempt certain agriculture authorities from municipal ordinances or regulations without the consent of the authority.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 11-20-71, 11-20-73, and 11-20-80, Code of Alabama 1975, are amended to read as follows:

"§11-20-71

(a) The board of directors of an agriculture authority shall be as specified in the articles and in accordance with

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29 Section 11-20-70.

30 (b) Each agriculture authority shall have a chair, vice
31 chair, secretary, and treasurer to be elected by the board of
32 directors. The offices of secretary and treasurer may, but
33 need not, be held by the same person. A majority of the
34 directors shall constitute a quorum for the transaction of
35 business. The officers and directors shall serve for the terms
36 provided for in the articles. A director may not draw any
37 salary for any service rendered or for any duty performed as
38 director. The duties of the chair, vice chair, secretary, and
39 treasurer shall be those as are customarily performed by such
40 officers and as may be prescribed by the board of directors
41 from time to time.

42 (c) All directors shall serve until their successors
43 are duly appointed or until they cease to be qualified.
44 Vacancies on the board shall be filled as provided for in the
45 articles, but any individual appointed to fill a vacancy shall
46 serve only for the unexpired portion of the term. In the event
47 any uncertainty arises as to the terms of office of the
48 directors, the county commission or individual authorized to
49 appoint the directors may clarify the term by adoption of an
50 appropriate resolution or by execution of an appropriate
51 certificate, and the term of office shall be as so clarified.

52 (d) All proceedings of the board of directors of an
53 agriculture authority shall be reduced to writing by the
54 secretary of the authority and shall be signed by at least two
55 directors present at the proceedings. Copies of the
56 proceedings, when certified by the secretary under the seal of

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57 the agriculture authority, shall be received in all courts as
58 prima facie evidence of the matters and things therein
59 certified.

60 (e) Directors of an agriculture authority must be
61 residents and qualified electors of the county within the
62 authorized operational area of the authority. If any director
63 ceases to be a resident of the county, he or she shall cease
64 to be a director, and the position shall remain vacant until a
65 successor is appointed in accordance with the articles and
66 this article.

67 (f) A director of an agriculture authority may not have
68 an interest, directly or indirectly, in any contract of work,
69 material, or services, or the profits therefrom, to be
70 furnished or performed for the authority under this article if
71 the director has, directly or indirectly, more than a 10
72 percent interest in any business, firm, or corporation, or
73 profits thereof, furnishing or providing work, materials, or
74 services.

75 (g) The board of directors may appoint former members
76 of the board to serve as directors emeritus. Directors
77 emeritus shall not have voting rights on the board or
78 otherwise directly participate in meetings of the board.
79 Directors emeritus shall receive no compensation for their
80 service, but may be granted benefits and may attend events of
81 the authority as guests of the authority at the discretion of
82 the board. The directors emeritus shall serve as goodwill
83 ambassadors for the authority and may perform duties at the
84 request of the authority. Directors emeritus shall be subject

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85 to subsections (e) and (f)."

86 "§11-20-73

87 (a) An agriculture authority shall have the following
88 powers, which it may exercise in the agriculture authority's
89 authorized operational area:

90 (1) To have succession by its corporate name until
91 dissolved as provided in this article.

92 (2) To adopt bylaws making provisions for its actions
93 not inconsistent with this article.

94 (3) To institute and defend legal proceedings in any
95 court of competent jurisdiction and proper venue; provided,
96 however, that the board may not be sued in any trial court
97 other than the courts of the county of incorporation;
98 provided, further, that the officers, directors, agents, and
99 employees of an agriculture authority may not be sued for
100 their actions on behalf of the authority except for actions
101 that are unreasonable or known by the person to be unlawful or
102 are performed with reckless disregard for the lawfulness of
103 such actions.

104 (4) To plan for construction and development of an
105 agriculture center within the operational area of the
106 agriculture authority on property owned by the authority.
107 Construction and development may include, without limitation,
108 any or all of the following:

109 a. Buildings to hold offices for use by the federal
110 government, the state or any agency of the state, the county,
111 or one or more municipalities within the county.

112 b. Buildings to house or accommodate public facilities



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113 of the federal government, the state or any agency of the
114 state, the county, or one or more municipalities within the
115 county.

116 c. Streets, boulevards, walkways, parkways, parks, or
117 other places of recreation.

118 d. Monuments, statues, or other structures beautifying
119 the agriculture center.

120 e. Community houses or meeting houses or auditoriums.

121 f. Arenas, convention halls, ~~or convention sites~~ sports
122 facilities, stadiums, hotels or other facilities for use as a
123 transient guest housing facility, multifamily housing,
124 dormitory housing, food courts or other food venue facilities,
125 any facilities which provide for or support any public or
126 private educational institution, and any other facilities
127 related to or incidental with the foregoing.

128 g. Music halls, art museums, art exhibits, or other
129 exhibits for the advancement of the humanities and cultural
130 development.

131 h. Any other buildings, structures, facilities, and
132 other improvements that the board of directors of the
133 agriculture authority determines are appropriate or useful or
134 expedient to the authority's purposes from time to time. The
135 determination of the authority board of directors shall be
136 conclusive.

137 (5) To acquire property and rights and interests in
138 property by gift, grant, lease, or purchase.

139 (6) To accept or receive gifts, bequests, and devises.

140 (7) To have and use a corporate seal and alter the seal

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141 at its pleasure.

142 (8) To appoint officers, agents, employees, and
143 attorneys and to fix their compensation.

144 (9) To hire professionals and enter into contracts for
145 their services in designing and supervising the construction
146 of any building, agriculture center, auditorium, arena,
147 convention hall, music hall, art museum, place of recreation,
148 art exhibit, office building, or other structure that it
149 desires to construct.

150 (10) To make and enter into contracts and to execute
151 all instruments necessary or convenient to lease or purchase
152 and own real or personal property to be used for the
153 furtherance of the purposes for the accomplishment of which
154 the authority is created.

155 (11) To plan for programs and exhibits in the
156 agriculture center for the advancement of the agricultural,
157 cultural, and workforce development interests of the citizens
158 of the county and of the municipalities thereof.

159 (12) To purchase or lease real property and rights or
160 easements therein necessary or convenient for its purposes and
161 to use the same so long as its existence shall continue.

162 (13) To accept pledges of revenues or grants of money
163 from any person or governmental entity.

164 (14) To sell and lease its property to any person or
165 governmental entity.

166 (15) To enter into financing agreements with federal or
167 state agencies that may require the authority to mortgage its
168 property.

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169 (16) To plan for programs and exhibits in the
170 agriculture center for the advancement of agricultural and
171 workforce development interests in the county.

172 (17) To enter into long-term contracts or agreements
173 for sewer service with any Class 5 municipality within three
174 miles of the authority or a utility board of the Class 5
175 municipality.

176 (18) To accept lease payments, loan repayments, or
177 other compensation to or for the authority or other public
178 person.

179 (19) To invest in bank deposits, U.S. Treasury bills,
180 projects, instruments, real, personal, or mixed property, or
181 any other investments as the board of directors of the
182 authority may from time to time determine to be appropriate
183 and convenient to accomplish any purpose for which an
184 agriculture authority is organized, including works of
185 internal improvement, interests in private or corporate
186 enterprises, loans of money or credit to individuals,
187 associations, or corporations; and to lend the authority's
188 credit, grant public money or things of value in aid of or to
189 any individual, association, or corporation whatsoever, or
190 become a stockholder in any such corporation, association, or
191 company by issuing bonds or otherwise even though they may be
192 in violation of Section 93 or Section 94 of the Constitution
193 of Alabama of ~~1901~~ 2022 if done by the state, a county, city,
194 town, or other subdivision of the state, notwithstanding the
195 fact that any such investment or action may involve the
196 expenditure or appropriation of funds received from a public

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197 person. In particular, but not by way of limitation, an
198 authority may invest its funds, from whatever source, in the
199 stock, bonds, debentures, notes, or other securities issued by
200 any person locating a project in the authority's operational
201 area and may enter into contracts or options, including
202 contracts or options for the conveyance, sale, or lease of
203 property, to any such person and make direct grants of money,
204 property, or services for the purpose of inducing the person
205 to locate a project in the authority's operational area.

206 (20) To enter into deeds, mortgages, leases, loan
207 agreements, or other agreements with any person.

208 (21) To acquire real property for the purpose of
209 establishing one or more agriculture centers; to improve
210 agriculture center sites, whether owned by the authority or by
211 any other person, including the improvement of the centers or
212 sites by the construction of roads, curbing, gutters,
213 drainage, sewerage, utilities, railroad spurs, docks, harbors,
214 ports, grading, and the like; to construct, for its own
215 account or the account of others, improvements thereon,
216 including any project, for the purpose of conveying, leasing,
217 or selling the same to any person, including the power to
218 convey, lease, or sell the same for its own account or to
219 construct the same as an inducement for any person to locate
220 and operate a project in the agriculture center or operational
221 area, even though the person may not have been identified at
222 the time that the improvement may be constructed.

223 (22) To sell, exchange, donate, and convey any or all
224 of its properties whenever its board of directors finds the

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225 action to be in furtherance of the purposes for which the
226 authority was organized.

227 (23) To issue its bonds for the purpose of carrying out
228 any of its powers and to apply proceeds from the sale of its
229 bonds, whether heretofore or hereafter issued, not only for
230 payment of interest thereon prior to and during the
231 construction and equipment of any buildings, structures,
232 facilities, or other improvements being financed thereby, but
233 also for payment of interest thereon.

234 (24) To mortgage and pledge any or all of its
235 properties both real and personal or any part or parts
236 thereof, as security for the payment of the principal of and
237 the interest on any bonds so issued and any agreements made in
238 connection therewith, whether then owned or thereafter
239 acquired, and to pledge the revenues and receipts therefrom or
240 from any thereof.

241 (25) To enter into contracts, agreements, options,
242 leases, loan agreements, deeds, and other instruments, and to
243 take other actions as may be necessary or convenient to
244 accomplish any purpose for which an authority is organized or
245 to exercise any power expressly granted hereunder.

246 (b) Contracts of an agriculture authority shall be
247 executed in the name of the authority by the chair and
248 attested by the secretary of the authority. The board may
249 provide by resolution for a different form for the execution
250 of a contract by an officer or agent other than the chair and
251 secretary. A contract, irrespective of its form and of the
252 persons executing the contract, shall not be binding unless

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253 the contract is authorized or ratified by the board.

254 (c) An agriculture authority may deposit its funds not
255 needed to meet expenses or obligations in any bank or building
256 and loan association, provided the deposit is fully insured by
257 a federal corporation or agency of the federal government
258 insuring deposits in financial institutions.

259 (d) In exercising the powers enumerated in this
260 section, all mortgages, contracts, judgments, investments,
261 loans, debts, and other obligations of any sort of the
262 authority due to any third party shall be recovered and
263 enforced only against the authority unless the county
264 commission approving the formation of the authority
265 specifically agrees to accept the obligation by a separate
266 affirmative vote of a majority of the members of the county
267 commission.

268 (e) In addition to all other powers at any time
269 conferred on it by this section or otherwise by law, an
270 authority shall have the following powers together with all
271 powers incidental thereto or necessary to the discharge
272 thereof in corporate form:

273 (1) To participate as a shareholder in a corporation;
274 as a joint venturer in a joint venture, whether said joint
275 venture is to be memorialized contractually or through the
276 formation of one or more separate business entities; as a
277 general or limited partner in a limited partnership or a
278 general partnership; as a member in a nonprofit corporation,
279 limited liability company; or as a member of any other lawful
280 form of business organization, which may be involved in the

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281 development or operational activities of any buildings,
282 structures, facilities, and other improvements that the board
283 of directors of the authority determines are appropriate or
284 useful or expedient to the authority's purposes from time to
285 time. In connection with the foregoing, an authority shall
286 have the power to elect or appoint an individual or
287 individuals to a governing body, enter into contracts or other
288 agreements with other parties for the development, operation,
289 design, marketing, maintenance, and use of any facilities upon
290 the terms as the board of directors of the authority
291 determines are appropriate or useful or expedient to the
292 authority's purposes. Any determination by the authority shall
293 be conclusive.

294 (2) To make or arrange for loans, contributions to
295 capital, and other debt and equity financing for the
296 activities of any corporation of which the authority is a
297 shareholder; any joint venture in which the authority is a
298 joint venture; any limited partnership or general partnership
299 of which the authority is a general or limited partnership;
300 any nonprofit corporation in which the authority is a member
301 of any other lawful form of business organization of which the
302 authority is a member; and to guarantee loans, issue bonds, or
303 incur other forms of indebtedness on behalf of the
304 corporation, joint venture, partnership, nonprofit
305 corporation, or other business entity, for such purposes. An
306 authority shall also have the power to loan funds which shall
307 include seller financing arrangements whereby the authority is
308 a seller to other governmental entities or other business

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309 entities whether for profit or nonprofit and whether
310 affiliated or non-affiliated with the authority, upon the
311 terms as the authority shall determine appropriate, useful, or
312 expedient for the authority's purposes and the determination
313 by the authority shall be conclusive.

314 (3) To create, establish, acquire, operate, or support
315 subsidiaries and affiliates, either for profit or nonprofit,
316 to assist the authority in fulfilling its purposes.

317 (4) To create, establish, or support nonaffiliated for
318 profit or nonprofit corporations or other lawful business
319 organizations that operate and have as their purposes the
320 furtherance of the authority's purposes.

321 (5) Without limiting the generality of the preceding
322 subdivisions, to accomplish and facilitate the creation,
323 establishment, acquisition, development, operation, or support
324 of any subsidiary, affiliate, nonaffiliated corporation, or
325 other lawful business organization by means of loans of funds,
326 leases of real or personal property, gifts and grants of
327 funds, or guarantees of indebtedness of the subsidiaries,
328 affiliates, and non-affiliated corporations.

329 (6) In addition to any other authority to enter into
330 contracts, an authority may enter into contracts, agreements,
331 or understandings with any other public and private parties
332 including, but not limited to, the following:

333 a. Design-build, design-build-operate, design-build-own
334 -operate, design-build-own-operate-maintain, design-build-
335 finance-operate-maintain, or other similar arrangements or
336 agreements pursuant to which the design, right-of-way

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337 acquisition, relocation of structures or utilities,
338 construction, financing, ownership, management, maintenance,
339 and operation, or any combination thereof, of a project is
340 accomplished by or on behalf of the authority.

341 b. Leases, licenses, franchises, concessions, or other
342 agreements for the development, operation, management, or
343 undertaking of all or any part of a project of or on behalf of
344 the authority.

345 (7) Notwithstanding any provision of law to the
346 contrary, proposals under this subsection may be evaluated and
347 awarded by the authority based on qualifications of
348 participants or best value, or both, as evaluated by
349 procedures of the authority and taking into consideration the
350 best interest of the authority. Evaluation criteria for a
351 contract procured pursuant to the preceding sentence shall be
352 set forth in the request for proposal for the contract. The
353 contract may also be awarded through any existing procurement
354 authority, proposals, or other means of procurement otherwise
355 available to the authority."

356 "§11-20-80

357 (a) An agriculture authority and all property in which
358 it may have any ownership, leasehold, or other interest,
359 direct or indirect, is exempt from all municipal planning
360 boards and municipal planning board requirements and all
361 municipal zoning ordinances and laws. This exemption shall not
362 apply to property owned by a private entity or private
363 entities in which an agriculture authority has no ownership,
364 leasehold, or other interest, direct or indirect.

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365 (b) Any agriculture authority incorporated prior to the
366 effective date of the act adding this subsection shall be
367 exempt from any ordinance or regulation of any municipality
368 unless the board of the authority consents to the application
369 of the ordinance or regulation to the authority."

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