

1 HB102
2 176330-1
3 By Representative Lee
4 RFD: County and Municipal Government
5 First Read: 07-FEB-17
6 PFD: 02/07/2017

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8 SYNOPSIS: Under existing law, a water, sewer, or fire
9 protection authority, or a combination authority,
10 may be incorporated upon approval of the county
11 commission where the territory the authority will
12 serve is located. The authority may add new
13 territory to its service area in an adjoining
14 county and is required to add at least one director
15 to its board elected by the county commission of a
16 county where the new territory lies.

17 This bill would provide that the county
18 commission of a county where new territory lies may
19 waive the appointment of any additional directors
20 by resolution of the county commission.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

25
26 To amend Section 11-88-5 of the Code of Alabama
27 1975, relating to water, sewer, and fire protection

1 authorities organized in a county; to authorize a county
2 commission to waive the appointment of additional board
3 members to the board of the authority where new territory is
4 added in an adjoining county.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Section 11-88-5 of the Code of Alabama
7 1975, is amended to read as follows:

8 "§11-88-5.

9 "(a) The certificate of incorporation of any
10 authority incorporated under the provisions of this article
11 may at any time and from time to time be amended in the manner
12 provided in this section.

13 "(b) (1) The board of directors of the authority
14 shall first adopt a resolution proposing an amendment to the
15 certificate of incorporation which shall be set forth in full
16 in the said resolution and which amendment may include:

17 "a. A change in the name of the authority;

18 "b. The addition to the service area of the
19 authority of new territory lying within the determining
20 county;

21 "c. Provisions for the operation of a system or
22 facility the operation of which is not then provided for in
23 the certificate of incorporation of the authority and which
24 the authority is authorized by this article to operate;

25 "d. Any matters which might have been included in
26 the original certificate of incorporation;

1 "e. Provisions for the addition to the service area
2 of the authority of new territory lying outside the
3 determining county, together with the related provisions
4 referred to in paragraphs a, b, c, and d of subdivision (2) of
5 this subsection; and

6 "f. With respect to an authority with a service area
7 that lies solely within one determining county, provisions for
8 a change in the number of directors to any odd number thereof
9 that the board deems appropriate; provided, however, in no
10 case shall the total number of directors be less than three or
11 more than five which provision may also provide for staggering
12 the terms of office of any new directors in the manner
13 contemplated by Section 11-88-6.

14 "(2) If any proposed amendment would add to the
15 service area of the authority new territory any part of which
16 lies within any county other than the determining county, such
17 proposed amendment shall include, in addition to a concise
18 legal description of the proposed new territory and any other
19 matters permitted by the foregoing provisions of subdivision
20 (1) of this subsection:

21 "a. Provision for election of at least one director
22 by the governing body of each county in which any part of the
23 proposed new territory lies; notwithstanding the foregoing,
24 the county commission of a county in which the new territory
25 is proposed to be added may waive the appointment of any
26 director or directors by resolution of the county governing
27 body;

1 "b. Provision for any change in the total number of
2 directors that the board deems appropriate; provided, however,
3 that in no case shall such total number of directors be less
4 than three;

5 "c. Provision for staggering the terms of office of
6 the directors in the manner contemplated by Section 11-88-6;
7 and

8 "d. Any provision that the board deems appropriate
9 for allocation of the assets of the authority, upon
10 dissolution, among the counties in which the service area
11 lies.

12 " (3) If the proposed amendment makes provision for
13 the operation of a system or facility not then provided for in
14 the certificate of incorporation of the authority, such
15 proposed amendment shall include, in addition to a concise
16 legal description of the area or areas in which the authority
17 proposes to render service from such system or facility (which
18 such area or areas shall lie wholly within the boundaries of
19 the determining county and may lie either within or without or
20 partly within and partly without the boundaries of any
21 municipality in the determining county), a provision for an
22 appropriate change in the name of the authority.

23 "(c) After the adoption by the board of a resolution
24 proposing an amendment to the certificate of incorporation of
25 the authority, the board shall file a written application with
26 the governing body of each county in which any part of the
27 authority's then existing service area lies and with the

1 governing body of each county in which any part of the
2 proposed new territory lies. Such application shall:

3 "(1) State, in the event that it is proposed to make
4 provision for the operation of a system or facility not then
5 provided for in the certificate of incorporation of the
6 authority, that the authority proposes to render service from
7 such a system or facility (which shall be named), contain a
8 concise legal description of the area or areas in which the
9 authority proposes to render the service provided for by such
10 system or facility and state that there is no public water
11 system, public sewer system, or public fire protection
12 facility, as the case may be, adequate to serve any area in
13 which it is proposed that the authority will render such
14 service;

15 "(2) State, in the event that it is proposed to add
16 any new territory to the service area of the authority, that
17 there is no public water system adequate to serve any new
18 territory in which it is proposed that the authority will
19 render water service, that there is no public sewer system
20 adequate to serve any new territory in which it is proposed
21 that the authority will render sewer service, and that there
22 is no public fire protection facility adequate to serve any
23 new territory in which it is proposed that the authority will
24 render fire protection service; provided, that in lieu of the
25 statement required by the foregoing provisions of this
26 subdivision, the said application may state that the board of
27 directors or similar managing body of the owner of the legal

1 or equitable title to an existing public water system, public
2 sewer system, or public fire protection facility, as the case
3 may be, has adopted a resolution declaring its intention to
4 convey to the authority its interest in such existing system
5 or facility, or both, or a leasehold estate therein;

6 "(3) State that the said amendment will promote the
7 public health, convenience and welfare; and

8 "(4) Request each governing body with which the
9 application is filed to adopt a resolution declaring that it
10 has reviewed the contents of the application and has found and
11 determined as a matter of fact that the statements contained
12 in the application are true.

13 "Every such application shall be accompanied by a
14 certified copy of the said resolution adopted by the board
15 proposing the said amendment to the certificate of
16 incorporation, together with such documents in support of the
17 application as the board may consider appropriate.

18 "(d) As promptly as may be practicable after the
19 filing of the said application with any governing body
20 pursuant to the foregoing provisions of subsection (c) of this
21 section, that governing body shall review the said application
22 and shall find and determine whether the statements in the
23 said application are true. In finding and determining whether
24 said amendment would promote the public health, convenience,
25 and welfare, the said governing body may consider, in
26 conjunction with any other factors it may deem relevant, the
27 desirability of alternative means of furnishing any proposed

1 new territory with water service, sewer service, and fire
2 protection service, or any thereof. If the said governing body
3 finds and determines that the statements in the said
4 application are true, it shall adopt a resolution declaring
5 that it has reviewed the said application and has found and
6 determined as a matter of fact that the statements in the said
7 application are true. If the said governing body finds and
8 determines that the statements in the said application are not
9 true, it shall deny the application. In the event that any
10 such application shows that the authority proposes to make
11 provision for the operation of a system or facility not then
12 provided for in its certificate of incorporation, any
13 governing body with whom such application is filed may,
14 without any investigation or further consideration, assume
15 that any statement therein that the authority proposes to
16 render service from such a new system or facility is true and
17 may, without any investigation or further consideration, so
18 find and determine in such resolution.

19 "(e) Within 40 days following the adoption by the
20 governing body with which the said application shall have been
21 filed of a resolution declaring the statements in the said
22 application to be true (or, in the event said application was
23 filed with the governing body of more than one county, within
24 40 days following the adoption of such a resolution by that
25 governing body that was the last to adopt such a resolution,
26 but if and only if the governing body of each other county
27 with whom such application was filed has theretofore adopted

1 such a resolution), the chairman of the board or other chief
2 executive officer of the authority and the secretary of the
3 authority shall sign and file for record in the office of the
4 judge of probate of the determining county a certificate in
5 the name of and in behalf of the authority, under its seal,
6 reciting the adoption of said respective resolution by the
7 board and by each of the said governing bodies and setting
8 forth the said proposed amendment. If the proposed amendment
9 provides for a change in the name of the authority, there
10 shall be filed, together with the certificate required by the
11 immediately preceding sentence, a certificate by the Secretary
12 of State showing that the proposed new name of the authority
13 is not identical to that of any other corporation then in
14 existence and organized under the laws of this state or so
15 nearly similar to that of any other such corporation as to
16 lead to confusion and uncertainty.

17 "(f) The judge of probate shall promptly examine
18 each such certificate and shall determine whether it is
19 complete and regular on its face and whether the proposed
20 amendment complies with the provisions of this article. If the
21 judge of probate shall find that each such certificate is
22 complete and regular on its face and that the proposed
23 amendment complies with the provisions of this article, he
24 shall enter and sign an order setting forth his finding and
25 requiring each such certificate to be recorded, together with
26 his order. Upon the filing for record of the said order and

1 each such certificate, the said amendment to the certificate
2 of incorporation shall become effective.

3 "(g) If the proposed amendment effects a change in
4 the name of the authority, the judge of probate shall promptly
5 send a notice to the Secretary of State, advising him of such
6 change."

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