

1 HB191  
2 139972-3  
3 By Representative Hill  
4 RFD: County and Municipal Government  
5 First Read: 07-FEB-12

1 ENGROSSED

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3  
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 any political subdivision of 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,~~ For the payment of all or any part of the costs  
8 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, except any land  
12 owned or used by a utility in connection with the  
13 distribution, transmission, or generation of electric power  
14 which is specifically benefited or increased in value by such  
15 improvements, in accordance with the following procedure:

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

1 however, that no assessment shall be prescribed or made  
2 against an electric utility.

3 "(2) The proposed assessment of each tract in the  
4 district, based on the estimated increase in value of each  
5 tract resulting from the special benefits derived from the  
6 proposed improvements, and consistent with Section 223 of the  
7 Constitution of Alabama of 1901.

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

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

22 "Upon receipt of the petition by the council, the  
23 council shall determine what approvals may be required by the  
24 appointing government in addition to the approval of the  
25 council, including, but not limited to, approval of zoning,  
26 subdivision, fire regulations, and other ordinances, rules,  
27 codes, and regulations of the appointing government, and if

1 other approvals are required, the appointing government shall  
2 forward the petition, or applicable portions thereof, to the  
3 appropriate boards and agencies to consider whether to grant  
4 the petition and to notify the district of the necessity of  
5 obtaining approvals. The petition shall be held by the  
6 appointing government in abeyance until all approvals as may  
7 be required have been received, or variances or exceptions  
8 granted.

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

15 ~~"(5) Upon receipt of all required approvals,~~  
16 ~~variances, or exceptions, the council shall conduct a hearing~~  
17 ~~with respect to the petition, and if considered expedient by~~  
18 ~~the council, the council may preliminarily assess the property~~  
19 ~~within the district as proposed in the petition and shall~~  
20 ~~further take any actions with respect to tax exemptions~~  
21 ~~considered expedient under subsection (c) of Section~~  
22 ~~11-99A-20.~~

23 ~~"(6) (5)~~ In the event that the board determines that  
24 it is necessary to amend its petition to the appointing  
25 government in order to conform to its rules, regulations, and  
26 ordinances, or to obtain variances and exceptions as may be

1 appropriate, or to obtain approval of the petition by the  
2 council, the board may do so.

3 "§11-99A-13.

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

1       inexpedient, the council shall advise the board of the reasons  
2       for its determination, and the board may submit a revised  
3       recommendation to the appointing government.

4               "§11-99A-17.

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

12              "§11-99A-21.

13              "If the owner of any land within the district fails  
14      to pay an assessment when due, time being of the essence, the  
15      board may commence proceedings to foreclose on the land as  
16      follows:

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

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



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

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

7           "a. File a complaint in the circuit court for the  
8 county in which the property is located requesting that the  
9 property be foreclosed. Thirty days following service of  
10 process, unless the entire assessment is paid in the meantime,  
11 the court shall enter a decree declaring that the property  
12 shall be sold to the highest bidder.

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

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

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

5           "(6) Upon declaring the highest bidder and receipt  
6 of the purchase price, ~~an agent of~~ the board shall ~~make out~~  
7 deliver a foreclosure deed to the highest bidder which shall  
8 vest therein legal title to the property by foreclosure,  
9 subject to easement or other rights in such property of  
10 persons other than the owner that has failed to pay the  
11 assessment. The owner of the property shall have no right of  
12 redemption unless otherwise provided in the board's  
13 proceedings with respect to the assessment.

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

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

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

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

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

13           "§11-99A-30.

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

23           "§11-99A-42.

24           "The council may make a reassessment or new  
25 assessment of a parcel if:

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

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

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

5           "(3) Requested in writing by a district to correct  
6 an error or omission in an existing assessment, or to comply  
7 with the methodology for the assessments as approved by the  
8 council as provided in this chapter, or to conform an  
9 assessment or assessments to the provisions and limitations  
10 thereupon of this chapter.

11           "§11-99A-43.

12           ~~"The district may issue temporary bonds for the~~  
13 ~~purpose of paying the costs for which bonds may be issued, or~~  
14 ~~bonds to be repaid out of the proceeds of a permanent or~~  
15 ~~long-term bond issue.~~

16           "The district at any time may obtain loans, in the  
17 amounts, on the terms and conditions, and payable from and  
18 secured by a pledge of such funds, revenues, assessments, and  
19 property, all as the board may determine, for the purpose of  
20 paying any costs of the district referenced in Section  
21 11-99A-2(6)(v) and (w) and Section 11-99A-15(c), and in  
22 evidence thereof the district may issue assessment revenue  
23 anticipation bonds, notes, or other evidences of debt. The  
24 provisions of Section 11-99A-15(f) shall apply to any such  
25 debt."

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

1                   §11-99A-52.

2                   (a) The formation and incorporation of each district  
3 heretofore formed and incorporated pursuant to this chapter by  
4 any county or municipality is hereby validated and confirmed  
5 from the date of such formation and incorporation,  
6 notwithstanding any noncompliance with any provisions of  
7 Section 11-99A-4 or other provision of this chapter with  
8 respect thereto; provided, however, that the validation and  
9 confirmation effected by this section shall not be applicable  
10 to any district the validity of which is being directly  
11 challenged in appropriate judicial proceedings in any proper  
12 court on the effective date of the act adding this section.

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

1           Section 3. It is the intent of the Legislature by  
2 the enactment of this act to clarify the existing provisions  
3 of law and, to that end, the amendments of the Alabama  
4 Improvement District Act enacted by this act shall be deemed  
5 declarative of existing law and shall therefore have both a  
6 prospective and retroactive or retrospective operation.

7           Section 4. In the event any provision of this act  
8 shall be declared invalid or unenforceable by a court of  
9 competent jurisdiction, the holding shall not affect the  
10 validity or enforceability of the remaining provisions hereof,  
11 which shall continue effective.

12           Section 5. This act shall become effective  
13 immediately following its passage and approval by the  
14 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 Representatives committee on County and Municipal Government..... . . . . . 07-FEB-12

Read for the second time and placed on the calendar with 1 substitute and 1 amendment..... . . . . . 12-APR-12

Read for the third time and passed as amended..... . . . . . 03-MAY-12

Yeas 94, Nays 0, Abstains 0

Greg Pappas  
Clerk