

1 SB178  
2 143490-1  
3 By Senator Waggoner  
4 RFD: Governmental Affairs  
5 First Read: 12-FEB-13

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8 SYNOPSIS: This bill would amend the Alabama  
9 Improvement District Act.

10 The bill would provide further for the  
11 appointment and terms of the members of the board  
12 of directors of a district and would provide for  
13 the assessment of lands within a district. This  
14 bill would also specify remedies for nonpayment of  
15 assessments. The bill would further provide for  
16 reassessments and amendments to existing  
17 assessments, provide for the issuance of bonds by a  
18 district, and would provide for prospective and  
19 retroactive operation.

20  
21 A BILL  
22 TO BE ENTITLED  
23 AN ACT  
24

25 To amend Sections 11-99A-9, 11-99A-11, 11-99A-13,  
26 11-99A-17, 11-99A-21, 11-99A-30, and 11-99A-42, 11-99A-43 of  
27 the Code of Alabama 1975, and to add Section 11-99A-52 to the

1 Code of Alabama 1975; relating to the Alabama Improvement  
2 District Act; to provide further for the terms of office of  
3 the board of directors of a district; to clarify the procedure  
4 for the assessment of lands within a district and that such  
5 procedure shall apply only to the lands actually assessed; to  
6 clarify that the remedies for nonpayment of assessments shall  
7 be consistent with current Alabama law; to provide further for  
8 temporary construction financing of improvements by a  
9 district; to provide that certain amendments to the Alabama  
10 Improvement District Act are declarative of existing law and  
11 shall have both a prospective and retrospective operation.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Sections 11-99A-9, 11-99A-11, 11-99A-13,  
14 11-99A-17, 11-99A-21, 11-99A-30, 11-99A-42, and 11-99A-43,  
15 Code of Alabama 1975, are amended to read as follows:

16 "§11-99A-9.

17 ~~"A board shall have~~ The district shall have a board  
18 of directors in which all powers of the district shall be  
19 vested and which shall consist of the number of members  
20 specified in the articles of incorporation, but not less than  
21 three nor more than 11. Members of the board shall be  
22 appointed by the appointing government. The articles of  
23 incorporation shall specify that the members of the board  
24 serve for staggered terms, with one-third, or as near to  
25 one-third as is practical, of the initial members serving for  
26 ~~one year~~ four years, with one-third, or as near to one-third  
27 as is practical, of the initial members to serve for ~~two~~ five

1 years, and with one-third, or as near to one-third as is  
2 practical, of the initial members to serve for ~~three~~ six  
3 years. Thereafter, the successors to members of the board of  
4 directors shall serve for ~~three-year~~ six-year terms. The  
5 proceedings of the appointing government by which members of  
6 the board are appointed shall specify the term for which the  
7 appointment is made. Upon the expiration of the term of office  
8 of any member of the board, the person whose term shall have  
9 expired shall remain a member of the board until his or her  
10 successor ~~has~~ shall have been duly appointed by the appointing  
11 government. Members of the board need not be owners,  
12 residents, electors, or taxpayers of the appointing government  
13 or the state.

14 "§11-99A-11.

15 "A district may petition the appointing government  
16 to assess some or all of the land within the district for the  
17 purpose of acquiring, constructing, or installing  
18 improvements, in accordance with the following procedure:

19 "(1) The board shall prepare plans for the  
20 acquisition, construction, or installation of the  
21 improvements. The plans shall include a reasonable description  
22 of the improvements and an estimate of the cost of the  
23 improvements.

24 "(2) The proposed assessment of each tract in the  
25 district, based on the estimated increase in value of each  
26 tract resulting from the special benefits derived from the

1 proposed improvements, and consistent with Section 223 of the  
2 Constitution of Alabama of 1901.

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

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

18 "Upon receipt of the petition by the council, the  
19 council shall determine what approvals may be required by the  
20 appointing government in addition to the approval of the  
21 council, including, but not limited to, approval of zoning,  
22 subdivision, fire regulations, and other ordinances, rules,  
23 codes, and regulations of the appointing government, and if  
24 other approvals are required, the appointing government shall  
25 forward the petition, or applicable portions thereof, to the  
26 appropriate boards and agencies to consider whether to grant  
27 the petition and to notify the district of the necessity of

1 obtaining approvals. The petition shall be held by the  
2 appointing government in abeyance until all approvals as may  
3 be required have been received, or variances or exceptions  
4 granted.

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

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

19 ~~"(6) (5)~~ In the event that the board determines that  
20 it is necessary to amend its petition to the appointing  
21 government in order to conform to its rules, regulations, and  
22 ordinances, or to obtain variances and exceptions as may be  
23 appropriate, or to obtain approval of the petition by the  
24 council, the board may do so.

25 "§11-99A-13.

26 ~~"Upon the entry into contingent contracts or receipt~~  
27 ~~of contingent bids, the board shall submit to the council a~~

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

26 "§11-99A-17.

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

8            "§11-99A-21.

9            "If the owner of any land within the district fails  
10           to pay an assessment when due, time being of the essence, the  
11           board may commence proceedings to foreclose on the land as  
12           follows:

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

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

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

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



1           "a. File a complaint in the circuit court for the  
2 county in which the property is located requesting that the  
3 property be foreclosed. Thirty days following service of  
4 process, unless the entire assessment is paid in the meantime,  
5 the court shall enter a decree declaring that the property  
6 shall be sold to the highest bidder.

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

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

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

25           "(6) Upon declaring the highest bidder and receipt  
26 of the purchase price, ~~an agent of~~ the board shall ~~make out~~  
27 deliver a foreclosure deed to the highest bidder which shall

1 vest therein legal title to the property by foreclosure,  
2 subject to easement or other rights in such property of  
3 persons other than the owner that has failed to pay the  
4 assessment. The owner of the property shall have no right of  
5 redemption unless otherwise provided in the board's  
6 proceedings with respect to the assessment.

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

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

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

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

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

6           "§11-99A-30.

7           "Subject to Section 223 of the Constitution of  
8 Alabama of 1901, if considered appropriate by a council, the  
9 cost of an assessment may be levied on property in proportion  
10 to, or based upon, front feet, or square footage of each  
11 parcel, acreage, ~~or~~ its estimate of the increase in value of  
12 the property resulting from the improvements for which the  
13 assessment was made, or in accordance with the formula  
14 determined by the district and approved by the appointing  
15 government therefor.

16           "§11-99A-42.

17           "The council may make a reassessment or new  
18 assessment of a parcel if:

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

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

23           "~~(3)~~ (2) On the written advice of legal counsel, the  
24 council determines that the original assessment is invalid.

25           "(3) Requested in writing by a district to correct  
26 an error or omission in an existing assessment, or to comply  
27 with the formula for the assessments as approved by the

1 council as provided in this chapter, or to conform an  
2 assessment or assessments to the provisions and limitations  
3 thereupon of this chapter.

4 "§11-99A-43.

5 ~~"The district may issue temporary bonds for the~~  
6 ~~purpose of paying the costs for which bonds may be issued, or~~  
7 ~~bonds to be repaid out of the proceeds of a permanent or~~  
8 ~~long-term bond issue.~~

9 "The district at any time may obtain loans, in the  
10 amounts, on the terms and conditions, and payable from and  
11 secured by a pledge of such funds, revenues, assessments, and  
12 property, all as the board may determine, for the purpose of  
13 paying any costs of the district referenced in Section  
14 11-99A-2(6)(v) and (w) and Section 11-99A-15(c), and in  
15 evidence thereof the district may issue assessment revenue  
16 anticipation bonds, notes, or other evidences of debt. The  
17 provisions of Section 11-99A-15(f) shall apply to any such  
18 debt."

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

21 §11-99A-52.

22 (a) The formation and incorporation of each district  
23 heretofore formed and incorporated pursuant to this chapter by  
24 any county or municipality is hereby validated and confirmed  
25 from the date of such formation and incorporation,  
26 notwithstanding any noncompliance with any provisions of  
27 Section 11-99A-4 or other provision of this chapter with

1 respect thereto; provided, however, that the validation and  
2 confirmation effected by this section shall not be applicable  
3 to any district the validity of which is being directly  
4 challenged in appropriate judicial proceedings in any proper  
5 court on the effective date of the act adding this section.

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

21 Section 3. It is the intent of the Legislature by  
22 the enactment of this act to clarify the existing provisions  
23 of law and, to that end, the amendments of the Alabama  
24 Improvement District Act enacted by this act shall be deemed  
25 declarative of existing law and shall therefore have both a  
26 prospective and retroactive or retrospective operation.

1                   Section 4. In the event any provision of this act  
2 shall be declared invalid or unenforceable by a court of  
3 competent jurisdiction, the holding shall not affect the  
4 validity or enforceability of the remaining provisions hereof,  
5 which shall continue effective.

6                   Section 5. This act shall become effective  
7 immediately following its passage and approval by the  
8 Governor, or its otherwise becoming law.