

1 HB323  
2 149652-4  
3 By Representative Hill  
4 RFD: Commerce and Small Business  
5 First Read: 21-FEB-13

1  
2 ENROLLED, An Act,

3 To amend Sections 11-99A-9, 11-99A-11, 11-99A-13,  
4 11-99A-17, 11-99A-21, 11-99A-30, and 11-99A-42, 11-99A-43 of  
5 the Code of Alabama 1975, and to add Section 11-99A-52 to the  
6 Code of Alabama 1975; relating to the Alabama Improvement  
7 District Act; to provide further for the terms of office of  
8 the board of directors of a district; to clarify the procedure  
9 for the assessment of lands within a district and that such  
10 procedure shall apply only to the lands actually assessed; to  
11 clarify that the remedies for nonpayment of assessments shall  
12 be consistent with current Alabama law; to provide further for  
13 temporary construction financing of improvements by a  
14 district; to provide that certain amendments to the Alabama  
15 Improvement District Act are declarative of existing law and  
16 shall have both a prospective and retrospective operation.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Sections 11-99A-9, 11-99A-11, 11-99A-13,  
19 11-99A-17, 11-99A-21, 11-99A-30, 11-99A-42, and 11-99A-43,  
20 Code of Alabama 1975, are amended to read as follows:

21 "§11-99A-9.

22 "(a) A board shall have The district shall have a  
23 board of directors in which all powers of the district shall  
24 be vested and which shall consist of the number of members  
25 specified in the articles of incorporation, but not less than

1 three nor more than 11. Members of the board shall be  
2 appointed by the appointing government. The articles of  
3 incorporation shall specify that the members of the board  
4 serve for staggered terms, with one-third, or as near to  
5 one-third as is practical, of the initial members serving for  
6 ~~one year~~ four years, with one-third, or as near to one-third  
7 as is practical, of the initial members to serve for ~~two~~ five  
8 years, and with one-third, or as near to one-third as is  
9 practical, of the initial members to serve for ~~three~~ six  
10 years. Thereafter, the successors to members of the board of  
11 directors shall serve for ~~three-year~~ six-year terms. The  
12 proceedings of the appointing government by which members of  
13 the board are appointed shall specify the term for which the  
14 appointment is made. Upon the expiration of the term of office  
15 of any member of the board, the person whose term shall have  
16 expired shall remain a member of the board until his or her  
17 successor ~~has~~ shall have been duly appointed by the appointing  
18 government. Members of the board need not be owners,  
19 residents, electors, or taxpayers of the appointing government  
20 or the state.

21 "(b) No vacancy in the membership of the board of  
22 directors or the voluntary disqualification or abstention of  
23 any member thereof shall impair the right of a quorum to  
24 exercise all of the powers and duties of the board.

25 "§11-99A-11.

1           ~~"A district may petition the appointing government~~  
2 ~~to assess some or all of the land within the district for the~~  
3 ~~purpose of acquiring, constructing, or installing~~  
4 ~~improvements, (a) For the payment of all or any part of the~~  
5 ~~costs of improvements and the costs referenced in Sections~~  
6 ~~11-99A-2(6)(v) and (w) and 11-99A-15(c), a district may~~  
7 ~~petition the appointing government for the assessment of all~~  
8 ~~or any part of that land within the district which is~~  
9 ~~specifically benefited or increased in value by such~~  
10 ~~improvements in accordance with the following procedure:~~

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

23           "(2) The proposed assessment of each tract in the  
24 district, based on the estimated increase in value of each  
25 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 have voted in favor of the assessment.

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

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

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

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

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

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

1           "§11-99A-13.

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

1 fees and other expenses incurred by the board in the  
2 foreclosure and suit.

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

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

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

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

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

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

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

16           "§11-99A-30.

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

1           "§11-99A-42.

2           "The council may make a reassessment or new  
3 assessment of a parcel if:

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

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

8           "~~(3)~~ (2) On the written advice of legal counsel, the  
9 council determines that the original assessment is invalid.

10           "(3) Requested in writing by a district to correct  
11 an error or omission in an existing assessment, or to comply  
12 with the methodology for the assessments as approved by the  
13 council as provided in this chapter, or to conform an  
14 assessment or assessments to the provisions and limitations  
15 thereupon of this chapter.

16           "§11-99A-43.

17           "~~The district may issue temporary bonds for the  
18 purpose of paying the costs for which bonds may be issued, or  
19 bonds to be repaid out of the proceeds of a permanent or  
20 long-term bond issue.~~

21           "The district at any time may obtain loans, in the  
22 amounts, on the terms and conditions, and payable from and  
23 secured by a pledge of such funds, revenues, assessments, and  
24 property, all as the board may determine, for the purpose of  
25 paying any costs of the district referenced in Section

1 11-99A-2(6)(v) and (w) and Section 11-99A-15(c), and in  
2 evidence thereof the district may issue assessment revenue  
3 anticipation bonds, notes, or other evidences of debt. The  
4 provisions of Section 11-99A-15(f) shall apply to any such  
5 debt."

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

8 §11-99A-52.

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

20 (b) In the event that, subsequent to June 12, 1999,  
21 land within the corporate limits of a municipality is removed  
22 from, or deannexed from, or otherwise determined not to be  
23 within, the corporate limits of such municipality, such that  
24 land within a district formed and incorporated pursuant to a  
25 petition approved by such municipality under Section 11-99A-4,

1       which land is therefore within the corporate limits of such  
2       municipality, is no longer contiguous at any point with land  
3       within the corporate limits of such municipality, then the  
4       district shall be valid in all respects from the date of  
5       formation and incorporation thereof, the land within such  
6       district shall be and remain within the corporate limits, and  
7       a part, of such municipality, and such municipality shall  
8       remain the appointing government with respect to such  
9       district.

10               Section 3. It is the intent of the Legislature by  
11       the passage of this act to clarify the existing provisions of  
12       law and, to that end, the amendments of the Alabama  
13       Improvement District Act affected by this act shall be deemed  
14       declarative of existing law and shall therefore have both a  
15       prospective and a retroactive or retrospective operation.

16               Section 4. In the event any provision of this act  
17       shall be declared invalid or unenforceable by a court of  
18       competent jurisdiction, the holding shall not affect the  
19       validity or enforceability of the remaining provisions hereof,  
20       which shall continue effective.

21               Section 5. This act shall become effective  
22       immediately following its passage and approval by the  
23       Governor, or its otherwise becoming law.

