

1 HB727
2 141290-1
3 By Representatives McClurkin and Carns
4 RFD: Commerce and Small Business
5 First Read: 19-APR-12

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8 SYNOPSIS: Under existing law, the Alabama Public
9 Service Commission regulates certain wastewater
10 service providers.

11 This bill would expand the definition of a
12 utility to include wastewater service providers and
13 would allow utilities exempt from regulation under
14 state law the ability to elect to be regulated by
15 the Alabama Public Service Commission.

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17 A BILL
18 TO BE ENTITLED
19 AN ACT
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21 To amend Sections 22-25B-6 and 37-4-1, Code of
22 Alabama 1975, relating to the regulation of public utility
23 companies and the Alabama Public Service Commission regulation
24 of Cluster and Community Wastewater Systems; to provide that
25 the rules for certain wastewater management entities may be
26 different from the regulations set forth in Title 37 of the
27 Code of Alabama 1975; to amend the definition of utility; and

1 to add Section 37-4-2A to Article 4, Chapter 4, of Title 37 of
2 the Code of Alabama 1975, to allow utilities exempt from
3 regulation by the commission under state law to waive such
4 exemption.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Sections 22-25B-6 and 37-4-1, Code of
7 Alabama 1975, are amended to read as follows:

8 "§22-25B-6.

9 "(a) The PSC shall promulgate and enforce such rules
10 as are necessary to certify and monitor the economic viability
11 of wastewater management entities. Such regulations may be
12 different from those regulations set forth in Title 37 and may
13 include, but may not be limited to, the following:

14 "(1) Financial viability requirements necessary to
15 insure the long-term operation and maintenance of wastewater
16 systems.

17 "(2) Conditions for the operation or permitting, or
18 both, of cluster wastewater and community wastewater systems.

19 "(3) A system of notice to report any violations of
20 certifications, permits, law, regulations, directives, or
21 orders, or any combination of these, of the PSC, ADEM, or
22 ADPH.

23 "(4) Enforcement mechanisms to insure compliance
24 with law, regulations, certificates, and directives of the
25 PSC.

1 "(5) Standardized financial operations and
2 management of cluster and community wastewater systems and
3 wastewater management entities.

4 "(b) The PSC may make the determination of economic
5 viability utilizing its own resources or may consult with or
6 contract with other agencies of government or appropriate
7 consultants. In determining the grant or denial of the
8 certificate of economic viability, the PSC shall consider the
9 economic viability of an existing entity or the expectation of
10 economic viability of a proposed entity based upon the
11 following criteria or any combination thereof:

12 "(1) Opinion by an independent certified public
13 accountant.

14 "(2) Previous economic history of the entity.

15 "(3) Assets, income, and expenses as related to
16 liabilities of the entity.

17 "(4) Financial stability and previous financial
18 history of the principal of the entity, and the business plan
19 and rate plan of the entity.

20 "(5) Insurability, bondability, and creditworthiness
21 of the entity as determined by standard business methods.

22 "(c) Before the PSC issues any certificate of
23 economic viability, the PSC shall require the wastewater
24 management entity to submit to the PSC evidence of financial
25 assurances. Financial assurances shall include at least one of
26 the following: A performance bond, letter of credit made
27 payable to the commission, pledge of assets, or other similar

1 instrument or mechanism in an amount sufficient to continue
2 management of the system if the entity ceases to exist or
3 fails to fulfill its obligations to the clients served by the
4 entity.

5 "(d) The bond, pledge, letter of credit, or other
6 instrument may be declared forfeited when the operational
7 permit is expired, unless renewal application is under review
8 by the department, or revoked. The PSC may present the
9 declaration of forfeiture to the obligor on the instrument for
10 payment.

11 "(e) Failure of the obligor to make full and timely
12 payment on its financial obligations shall constitute a cause
13 of action for recovery in a civil action at the instance of
14 the PSC.

15 "(f) A wastewater management entity shall not sell,
16 assign, or divest in any way assets or responsibilities
17 without the express written consent of the PSC.

18 "(g) Rate charges to customers for wastewater system
19 service by a certified wastewater management entity shall be
20 approved by the PSC pursuant to the laws, rules, regulations,
21 and procedures pertaining to utilities.

22 "(h) The failure of any wastewater management entity
23 to comply with any requirement, rule, or directive of the PSC
24 or to maintain its operating or discharge permit or other
25 permits in good standing, may result in the revocation by the
26 PSC of the wastewater management entity's certification or the
27 assessment of a civil penalty, or both, in accordance with

1 statutory procedures and regulations of the PSC. Upon the
2 revocation of a certificate of economic viability, the
3 commission shall promptly notify the department.

4 "§37-4-1.

5 "Unless otherwise specified, when used in this
6 article, these terms shall have the following meanings:

7 "(1) COMMISSION. The Alabama Public Service
8 Commission.

9 "(2) COMMISSIONER. A member of the commission.

10 "(3) MUNICIPALITY. Any municipal corporation
11 organized under the laws of this state.

12 "(4) PERSON. Such term shall mean and include
13 individuals, associations of individuals, firms, partnerships,
14 companies, corporations, municipalities, governmental
15 agencies, their lessees, trustees, or receivers appointed by
16 any court whatsoever, in the singular number as well as in the
17 plural.

18 "(5) NONUTILITY. Any federal agency,
19 instrumentality, or corporation, owned by the United States,
20 and any corporation or joint stock company in which the United
21 States or any of its departments, establishments, or agencies,
22 owns more than 50 percent of the voting shares of stock of
23 such corporation or joint stock company.

24 "(6) SECURITIES. Such term shall mean and include
25 stock, stock certificates, bonds, notes, debentures, or other
26 evidences of indebtedness, authorized, issued, or executed by
27 any utility.

1 "(7) UTILITY. Such term shall mean and include every
2 person, not engaged solely in interstate business, that now or
3 may hereafter own, operate, lease, or control:

4 "a. Any plant, property, or facility for the
5 generation, transmission or distribution, sale or furnishing
6 to or for the public of electricity for light, heat, or power,
7 or other uses, including any conduits, ducts, or other
8 devices, materials, apparatus, or property for containing,
9 holding, or carrying conductors used or to be used for the
10 transmission of electricity for light, heat, or power, or
11 other uses.

12 "b. Any plant, property, or facility for the
13 manufacture, storage, distribution, sale, or furnishing to or
14 for the public of natural or manufactured gas for light, heat,
15 or power, or other uses.

16 "c. Any plant, property, or facility for the supply,
17 storage, distribution, or furnishing to or for the public of
18 water for manufacturing, municipal, domestic, or other uses.

19 "d. Any plant, property, or facility for the
20 production, transmission, conveyance, delivery, or furnishing
21 to or for the public of steam for heat or power, or other
22 uses.

23 "e. Any public wharf, dock, or terminal.

24 "f. Any boat line propelled by any power and not
25 regulated by the laws of this state heretofore or hereafter
26 enacted as a steamboat or steam packet line.

1 "g. Any wastewater collection system or treatment
2 system, or both, or multiple systems.

3 "The term "utility" shall also mean and include two
4 or more utilities rendering joint service.

5 "(8) RATE. Such term shall mean and include, in the
6 plural number as well as in the singular, every individual or
7 joint rate, classification, fare, toll, charge, or other
8 compensation for service rendered, or to be rendered, by any
9 utility, and every rule, regulation, practice, act,
10 requirement, or privilege in any way relating to such rate,
11 fare, toll, charge, or other compensation, and any schedule or
12 tariff, or part of a schedule or tariff thereof.

13 "(9) SERVICE REGULATION. Such term shall mean and
14 include every rule, regulation, practice, act, or requirement
15 in any way relating to the service or facilities of a utility,
16 including the voltage of electricity, the heat units, pressure
17 and candlepower of gas, the supply, rates, and pressure of
18 water, and in general the quality of any commodity, service,
19 or product supplied.

20 "(10) HOLDING COMPANY. Such term shall mean and
21 include firms, partnerships, companies, corporations,
22 individuals, and associations made up in whole or in part of
23 individuals, firms, partners, companies, trusts at common law,
24 corporations, or any other legal entities, their lessees,
25 trustees, or receivers appointed by any court whatsoever, in
26 the singular number as well as in the plural, who own or
27 control as much as 10 percent in number or amount of the

1 outstanding shares of common stock of any utility engaged in
2 any intrastate business in this state.

3 "(11) COMMON STOCK. Such term shall mean and include
4 any and all stock, shares, or interest in any such utility of
5 such nature that the ownership or control of a majority of the
6 stock, shares, or interest, in number and amount, or in number
7 or amount thereof, vests the control and management of such
8 utility in the holders or owners thereof.

9 "(12) AFFILIATED INTERESTS. Such term shall mean and
10 include the following:

11 "a. Every corporation and person owning or holding
12 directly or indirectly five percent or more of the voting
13 securities of any utility engaged in any intrastate business
14 in this state.

15 "b. Every corporation and person, other than those
16 specified in paragraph a. hereof, in any chain of successive
17 ownership of five percent or more of voting securities, the
18 chain beginning with the holder or holders of the voting
19 securities of such utility.

20 "c. Every corporation or person with which the
21 utility has a management or service contract."

22 Section 2. Section 37-4-2A is added to Article 4,
23 Chapter 4, of Title 37 of the Code of Alabama 1975, to read as
24 follows:

25 §37-4-2A. Jurisdiction of commission as to exempt
26 utilities under state law.

1 Any utility exempt from regulation by the commission
2 under state law, including, for example, Title 11, may elect
3 to irrevocably waive such exemption in writing to the
4 commission at which point such utility shall be subject to the
5 jurisdiction, authority, power, and control of the commission
6 pursuant to this title.

7 Section 3. The provisions of this act are severable.
8 If any part of this act is declared invalid or
9 unconstitutional, that declaration shall not affect the part
10 which remains.

11 Section 4. This act shall become effective
12 immediately following its passage and approval by the
13 Governor, or its otherwise becoming law.