

1 SB485
2 130417-2
3 By Senator Bussman
4 RFD: Judiciary
5 First Read: 24-MAY-11

8 SYNOPSIS: This bill would authorize creation of water
9 supply reservoir watershed management authorities
10 to protect, provide for, and sustain the water
11 quality of their subject water supply reservoirs
12 and associated watersheds.

13 This bill would establish the process by
14 which such authorities are created and governed and
15 would provide for the powers, officers, and
16 employees of the authorities.

17
18 A BILL

19 TO BE ENTITLED

20 AN ACT

21
22 To authorize the creation of water supply reservoir
23 watershed management authorities as public corporations; to
24 provide the requirements for creating such an authority; to
25 provide for the powers of the authority; to provide that the
26 authority shall be governed by a board; to provide for the
27 membership, terms, and duties of the board; and to authorize

1 employees of the board to participate in the state retirement
2 program and the state employees' health insurance program.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. The Legislature intends for this act to
5 provide for the establishment of water supply reservoir
6 watershed management authorities in order to protect, provide
7 for, and sustain the water quality of subject reservoirs.

8 Section 2. For the purposes of this act, the
9 following words and phrases shall have the meanings indicated
10 unless the context clearly indicates a different meaning:

11 (1) AUTHORITY. A water supply reservoir watershed
12 management authority created pursuant to this act with the
13 powers authorized by this act and subject to the restrictions
14 set out in this act.

15 (2) BOARD OF DIRECTORS. The governing body of the
16 authority.

17 (3) DIRECTOR. One of the members of the governing
18 body of the authority.

19 (4) STATE. The State of Alabama.

20 (5) WATER SUPPLY RESERVOIR. A reservoir with all of
21 the following characteristics:

22 a. Authorized for construction pursuant to a U.S.
23 Army Corps of Engineers Clean Water Act Section 404 permit
24 issued between January 1, 2006, and December 31, 2016.

25 b. Intended to provide a primary, supplemental, or
26 emergency source of water for public use.

Section 3. The purpose of an authority is to develop, coordinate, execute, and ensure enforcement of plans and programs relating to any phase of conservation of water, water usage, water pollution control, wildlife habitat protection, agricultural and timberland protection, erosion prevention and control of erosion, the implementation of best management practices and land management practices, and sediment and turbidity impacts within the watershed, particularly with respect to protecting and enhancing the water quality of water supply reservoirs. With respect to this purpose, an authority shall not supersede the regulatory powers of the Alabama Department of Environmental Management, the Alabama Department of Agriculture and Industries, and the Alabama Department of Public Health or the best management practices of the relevant soil and water conservation district. An authority shall rely on and utilize the enforcement powers and best management practices of those agencies to ensure adequate regulatory compliance and environmental protection practices within the watershed.

Section 4. Any management guidelines developed by an authority to protect forested areas of the watershed shall follow the best management practices established by the Alabama Forestry Commission as they pertain to forested watersheds.

Section 5. Land included in the jurisdiction of an authority shall be limited to a defined watershed not to exceed 50 square miles, or some portion thereof, in the case

1 of a watershed which encompasses multiple counties.
2 Furthermore, neither the watershed nor lands or facilities
3 that are subject to the licensing jurisdiction of the federal
4 Energy Regulatory Commission or the jurisdiction of the
5 Alabama Public Service Commission to issue certificates of
6 convenience and necessity shall be subject to the exercise of
7 any powers or authorities granted herein.

8 Section 6. (a) When three or more residents, who are
9 18 years of age or older, within a defined watershed which
10 either contains an existing water supply reservoir or an
11 anticipated water supply reservoir, desire to form a water
12 supply reservoir watershed management authority, the residents
13 shall file a petition with the county commission of the county
14 in which the water supply reservoir, as constructed or as
15 proposed to be constructed, is located.

16 (b) In the case of a watershed encompassing multiple
17 counties, the incorporators may either elect to limit the
18 proposed authority to that portion of the watershed within a
19 particular county and submit the petition to the relevant
20 county commission or make a joint petition as provided in
21 Section 7.

22 (c) The petition shall define the boundaries of the
23 proposed authority, the number of acres of land involved,
24 reasons for requesting creation of the authority, the proposed
25 name for the authority, and other information pertinent to
26 such proposal. The proposed name of an authority shall not be
27 the same as, or deceptively similar to, the name of any other

1 authority. The proposed name shall include references to the
2 geographic features of the area encompassing the authority.

3 Section 7. (a) If a proposed authority encompasses
4 more than one county, the petition shall be presented to the
5 county commissions of all such counties, and the county
6 commissioners of all such counties shall act as a joint
7 commission in the formation of the authority.

8 (b) Pursuant to this act, whenever it is necessary
9 for a joint commission, the meeting may be called by a
10 majority of the members of the several county commissions
11 comprising the joint commission.

12 (c) A majority of the joint commission shall
13 constitute a quorum. All actions taken by the joint commission
14 shall require a majority vote of all members comprising the
15 joint commission who are voting on the action.

16 Section 8. (a) Within 30 days after the petition has
17 been filed with the county commission, the commission shall
18 cause due notice to be given of a proposed hearing upon the
19 practicability and feasibility of creating the authority. All
20 interested parties shall have the right to attend such hearing
21 and be heard. If it shall appear at the hearing that other
22 lands should be included or that lands included in the
23 petition should be excluded, the county commission may permit
24 such inclusion or exclusion, provided the land area involved
25 still meets the requirements of this act.

26 (b) If a majority of the county commission, after a
27 final hearing, determines from the facts presented at the

hearing and upon the available information that there is need in the interest of the public health, safety, and welfare for such an authority to function in the territory considered, it shall make and record the determination and shall define, by description, the boundaries of the authority. The territory shall constitute an authority. If a majority of the county commission, after final hearing, determines need does not exist for the authority, it shall make and record the determination and shall deny the petition.

Section 9. (a) An authority shall be governed by a board of directors consisting of the following and appointed by the following appointing entities:

(1) Three directors appointed by the relevant county commission from which the watershed is principally located.

(2) Three directors appointed by the city council of the county seat, so long as the county seat purchases water from the water supply reservoir, or evidences, by resolution, an intention to purchase water once the reservoir is constructed.

(3) One director appointed by each of the water systems, if any, which purchase potable water that, prior to treatment, originated from the water supply reservoir, or which evidences, by resolution, an intention to purchase such water once the reservoir is constructed.

(b) Upon a vote by six or more directors, additional city councils or boards may also be authorized to appoint one director of its choosing to the board of directors, so long as

1 the city or board seeking to add a director to the board
2 purchases water from the water supply reservoir, or which
3 evidences, by resolution, an intention to purchase water once
4 the reservoir is constructed.

5 (c) With the exception of directors appointed
6 pursuant to subsection (b) of this section, appointments of
7 directors shall be made no later than 90 days after a petition
8 to incorporate an authority is approved pursuant to Section 8.

9 (d) Notwithstanding subsection (c), no new positions
10 for directors on the board of directors shall be added after
11 December 31, 2016.

12 (e) The membership of the board shall be inclusive
13 and reflect the racial, gender, urban/rural, and economic
14 diversity of the geographic area represented by the authority.

15 (f) Should an appointing entity purchase or
16 otherwise acquire another appointing entity, then the
17 acquiring entity shall not obtain the right of the acquired
18 entity of appointment of a board member.

19 (g) A quorum shall be required for the authority to
20 meet or otherwise transact business. For the purposes of this
21 act, a quorum shall exist upon the presence of 50 percent of
22 the appointed board members plus one.

23 (h) Upon the appointment of a sufficient number of
24 directors to establish a quorum, the board of directors shall
25 meet to, among other necessary items of business, assign the
26 terms of office of the original members of the board of
27 directors. The terms shall be staggered and the terms shall be

1 no greater than four years nor less than two years, although
2 successors of the originally appointed directors shall serve
3 for terms of four years. For each director, the relevant term
4 of office shall commence on the date the director was
5 appointed to the authority. A director shall hold office until
6 his or her successor is appointed and assumes office.

7 (i) Vacancies on the board of directors occurring
8 before the expiration of a term shall be filled for the
9 remainder of the unexpired term by appointment by the relevant
10 appointing entity for that particular vacant position as set
11 forth in subsections (a) and (b) of this section.

12 (j) An oath as provided in Section 279 of the
13 Constitution of Alabama of 1901, now appearing as Section 279
14 of the Official Recompilation of the Constitution of Alabama
15 of 1901, as amended, shall be administered to all board
16 members prior to assuming office.

17 Section 10. (a) The board of directors of an
18 authority shall annually elect from its membership a chair,
19 secretary, and treasurer. The treasurer shall execute an
20 official bond for the faithful performance of the duties of
21 his or her office to be approved by the board, except that no
22 bond shall be required until such time as the authority
23 possesses funds. The bond shall be executed with at least
24 three solvent personal sureties whose solvency must exceed the
25 amount of the bond or by a surety company authorized to do
26 business in this state and shall be in an amount determined by
27 the board. If the treasurer is required to execute a surety

company bond, the premium on the bond shall be paid by the authority.

(b) The chair of a board shall give notice of all meetings and the agenda for each meeting at least seven days prior to the date of the meeting. All regular, special, or emergency meetings shall be called in conformity with the Alabama Open Meetings Act. In the absence of action by the board regarding the agenda for a meeting, the chair shall have the authority to set the agenda.

(c) A board shall have the power to declare a position on the board vacant if the board member holding the position is absent from three or more consecutive meetings. Provided, however, the board shall provide notice to the non-attending member prior to declaring the position vacant. A vacancy created pursuant to this subsection shall be filled in the same manner as other vacancies are filled.

(d) A board shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted. The board shall decide where such records will be kept.

Section 11. A member of the board of directors may not receive a salary but may be reimbursed by his or her relevant appointing entity for actual and necessary expenditures incurred in the performance of his or her duties.

Section 12. The board of directors of an authority shall have all of the following powers:

(1) Acquire, by purchase, gift, grant, bequest, or devise, such lands, reservoirs, riparian rights, or rights-of-way as are necessary for the exercise of any authorized function of the authority within the watershed.

(2) Either by direct issuance or transfer, hold such permits the board of directors deems necessary to carry out the purpose and intent of this act. The permits shall include, but are not limited to, permits issued by the U.S. Army Corps of Engineers.

(3) Construct, improve, operate, and maintain such structures and projects as may be necessary for the exercise of any authorized function of the authority.

(4) Borrow such money as is necessary for the purpose of acquiring rights-of-way and establishing, constructing, reconstructing, repairing, enlarging, and maintaining such structures and improvements as are required by the authority in the performance of its functions.

(5) Sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes provided for by this act.

(6) Make and execute contracts and other instruments necessary and convenient to the exercise of its powers.

(7) Sue and be sued in the name of the authority.

(8) Cooperate with or act as agent for the State of Alabama or any of its agencies or the United States or any of its agencies or any county or municipality in connection with

the acquisition, construction, operation, or administration of any project within the watershed.

(9) Accept donations, gifts, and contributions in money, services, materials, or otherwise from the United States or its agencies or from the State of Alabama or its agencies or from any county or municipality or from any individual and use or expend such moneys, services, materials, or other such contributions in carrying out the provisions of this act.

(10) Employ such employees as the board may determine and fix their compensation, qualifications, and duties and delegate to the chair of the board or any member or employee of the board such powers and duties as it may deem proper.

(11) Call upon the Attorney General of the state for such legal services as it may require or employ its own counsel and legal staff.

(12) Have a seal, which seal shall be judicially noticed.

(13) Have perpetual succession unless terminated as provided in this act.

(14) Cooperate with watershed management authorities, soil and water conservation districts, the Alabama Department of Environmental Management, the Alabama Department of Agriculture and Industries, and the Alabama Department of Public Health in the exercise of any and all powers conferred pursuant to this act.

(15) By coordinating with and relying on the compliance, inspection, and enforcement powers of the Alabama Department of Environmental Management, the Alabama Department of Agriculture and Industries, and the Alabama Department of Public Health, and the best management practices of the relevant soil and water conservation district, ensure the protection of the environmental quality of the watershed.

(16) Adopt and implement a watershed management plan for those lands and waters within the watershed.

(17) Pursuant to contracts with the relevant county commission soil and water conservation district, conduct water quality and biological monitoring within the watershed in order to assess the effectiveness of water quality protection measures within the watershed.

(18) Seek funding for its operations from federal, state, local, and private sources.

(19) Conduct or otherwise assist educational efforts in support of protecting and improving water quality within the watershed.

(20) Coordinate with the Natural Resources Conservation Service, the relevant county soil and water conservation district, and other organizations in the encouragement of volunteer stakeholder programs and participation in educational and water quality monitoring programs within the watershed.

(21) Contract with the relevant utilities board for the city or county, if applicable, to provide funding and

1 other resources to the authority and the relevant county soil
2 and water conservation district in order to carry out the
3 provisions and intent of this act.

4 Section 13. (a) At any time, the board of directors
5 of the authority may file a petition with the Secretary of
6 State and the appointing entities identified in subsection (a)
7 of Section 9 requesting that the existence of the authority be
8 discontinued. The petition shall state the reasons for
9 discontinuance.

10 (b) The Department of Examiners of Public Accounts
11 shall specify as a part of the petition that all obligations
12 of the authority can be properly satisfied by the use of the
13 existing assets of the authority.

14 (c) All assets, including, but not limited to, real
15 property, personal property, equipment and supplies, acquired,
16 appropriated to, or received, shall be deemed property of the
17 appointing entities in percentages commensurate with their
18 membership on the board of directors.

19 Section 14. A authority established pursuant to this
20 act shall be subject to audits by the Department of Examiners
21 of Public Accounts.

22 Section 15. Members of the board of directors of an
23 authority shall be considered public officials for the
24 purposes of Chapter 25 of Title 36, Code of Alabama 1975.

25 Section 16. Pursuant to Section 36-27-6(a), Code of
26 Alabama 1975, the board of directors may elect for the

employees of the authority to participate in the Employees' Retirement System of Alabama.

Section 17. Pursuant to Section 36-29-14, Code of Alabama 1975, the board of directors may elect for the employees of the authority to participate in the health care coverage program offered by the State Employees' Insurance Board.

Section 18. An authority shall be considered a state authority for the purposes of Chapter 16 of Title 41, Code of Alabama 1975, regarding competitive bidding on public contracts.

Section 19. The property and interests acquired by an authority organized under this act shall be exempt from all state, county, and local taxation.

Section 20. This act shall not be construed to create, preempt, or convey ownership interests in any water supply reservoir which is located within or which is constructed within the territory of a water supply reservoir watershed management authority created pursuant to this act. Such ownership shall be based on the legal principles of existing statutory and case law, contractual, real property, and otherwise, as exercised and memorialized in the acquisition and construction of the reservoir or reservoirs in question. Nothing in this act shall be construed to preclude ownership of the water supply reservoir from ultimately being acquired by those water systems purchasing water from the

1 water supply reservoir in percentages of ownership
2 commensurate with the percentages of water purchased.

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