SB275

VGEKVLP-1

By Senators Melson, Sessions

RFD: Agriculture, Conservation, and Forestry

First Read: 02-Apr-24

SYNOPSIS:

Under existing law, a county may establish an authority pursuant to Title 11, Code of Alabama 1975, for the purposes of promoting agricultural businesses, operations, and commodities, workforce development, and economic development within the county.

This bill would specify that an authority in addition to any other legal authority may develop commercial facilities and use the revenue from the operation of the facilities to support the authority's mission.

A BILL

TO BE ENTITLED

AN ACT

To amend Section 11-20-73, last amended by Act 2023-232, 2023 Regular Session, Code of Alabama 1975, relating to agriculture authorities organized by a county under Section 11-20-70 of the Code of Alabama 1975, to further specify the power of an authority to develop commercial facilities and to use the revenue generated to support the authority's mission.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 11-20-73, last amended by Act 2023-232, 2023 Regular Session, Code of Alabama 1975, is amended to read as follows:

"§11-20-73

(a) An agriculture authority shall have the following powers, which it may exercise in the agriculture authority's authorized operational area:

(1) To have succession by its corporate name until dissolved as provided in this article.

(2) To adopt bylaws making provisions for its actions not inconsistent with this article.

(3) To institute and defend legal proceedings in any court of competent jurisdiction and proper venue; provided, however, that the board may not be sued in any trial court other than the courts of the county of incorporation; provided, further, that the officers, directors, agents, and employees of an agriculture authority may not be sued for their actions on behalf of the authority except for actions that are unreasonable or known by the person to be unlawful or are performed with reckless disregard for the lawfulness of such actions.

(4) To plan for construction and development of an agriculture center within the operational area of the agriculture authority on property owned by the authority. Construction and development may include, without limitation, any or all of the following:

a. Buildings to hold offices for use by the federal government, the state or any agency of the state, the county, or one or more municipalities within the county.

b. Buildings to house or accommodate public facilities of the federal government, the state or any agency of the

state, the county, or one or more municipalities within the county.

c. Streets, boulevards, walkways, parkways, parks, or other places of recreation.

d. Monuments, statues, or other structures beautifying the agriculture center.

e. Community houses, meeting houses, or auditoriums.

f. Arenas, convention halls, sports facilities, stadiums, hotels or other facilities for use as a transient guest housing facility, multifamily housing, dormitory housing, food courts or other food venue facilities, any facilities that provide for or support any public or private educational institution, and any other facilities related to or incidental to the foregoing.

g. Music halls, art museums, art exhibits, or other exhibits for the advancement of the humanities and cultural development.

h. Any other buildings, structures, facilities, and other improvements that the board of directors of the agriculture authority determines are appropriate, useful, or expedient to the authority's purposes from time to time. The determination of the authority board of directors shall be conclusive.

(5) To acquire property and rights and interests in property by gift, grant, lease, or purchase.

(6) To accept or receive gifts, bequests, and devises.

(7) To have and use a corporate seal and alter the seal at its pleasure.

(8) To appoint officers, agents, employees, and attorneys and to fix their compensation.

(9) To hire professionals and enter into contracts for their services in designing and supervising the construction of any building, agriculture center, auditorium, arena, convention hall, music hall, art museum, place of recreation, art exhibit, office building, or other structure that it desires to construct.

(10) To make and enter into contracts and to execute all instruments necessary or convenient to lease or purchase and own real or personal property to be used for the furtherance of the purposes for the accomplishment of which the authority is created.

(11) To plan for programs and exhibits in the agriculture center for the advancement of the agricultural, cultural, and workforce development interests of the citizens of the county and of the municipalities thereof.

(12) To purchase or lease real property and rights or easements therein necessary or convenient for its purposes and to use the same so long as its existence shall continue.

(13) To accept pledges of revenues or grants of money from any person or governmental entity.

(14) To sell and lease its property to any person or governmental entity.

(15) To enter into financing agreements with federal or state agencies that may require the authority to mortgage its property.

(16) To plan for programs and exhibits in the

agriculture center for the advancement of agricultural and workforce development interests in the county.

(17) To enter into long-term contracts or agreements for sewer service with any Class 5 municipality within three miles of the authority or a utility board of the Class 5 municipality.

(18) To accept lease payments, loan repayments, or other compensation to or for the authority or other public person.

(19) To invest in bank deposits, U.S. Treasury bills, projects, instruments, real, personal, or mixed property, or any other investments as the board of directors of the authority may from time to time determine to be appropriate and convenient to accomplish any purpose for which an agriculture authority is organized, including works of internal improvement, interests in private or corporate enterprises, loans of money or credit to individuals, associations, or corporations; and to lend the authority's credit, grant public money or things of value in aid of or to any individual, association, or corporation whatsoever, or become a stockholder in any such corporation, association, or company by issuing bonds or otherwise even though they may be in violation of Section 93 or Section 94 of the Constitution of Alabama of 2022, if done by the state, a county, city, town, or other subdivision of the state, notwithstanding the fact that any such investment or action may involve the expenditure or appropriation of funds received from a public person. In particular, but not by way of limitation, an

authority may invest its funds, from whatever source, in the stock, bonds, debentures, notes, or other securities issued by any person locating a project in the authority's operational area and may enter into contracts or options, including contracts or options for the conveyance, sale, or lease of property, to any such person and make direct grants of money, property, or services for the purpose of inducing the person to locate a project in the authority's operational area.

(20) To enter into deeds, mortgages, leases, loan agreements, or other agreements with any person.

(21) To acquire real property for the purpose of establishing one or more agriculture centers; to improve agriculture center sites, whether owned by the authority or by any other person, including the improvement of the centers or sites by the construction of roads, curbing, gutters, drainage, sewerage, utilities, railroad spurs, docks, harbors, ports, grading, and the like; to construct, for its own account or the account of others, improvements thereon, including any project, for the purpose of conveying, leasing, or selling the same to any person, including the power to convey, lease, or sell the same for its own account or to construct the same as an inducement for any person to locate and operate a project in the agriculture center or operational area, even though the person may not have been identified at the time that the improvement may be constructed.

(22) To sell, exchange, donate, and convey any or all of its properties whenever its board of directors finds the action to be in furtherance of the purposes for which the

authority was organized.

(23) To issue its bonds for the purpose of carrying out any of its powers and to apply proceeds from the sale of its bonds, whether heretofore or hereafter issued, not only for payment of interest thereon prior to and during the construction and equipment of any buildings, structures, facilities, or other improvements being financed thereby, but also for payment of interest thereon.

(24) To mortgage and pledge any or all of its properties both real and personal or any part or parts thereof, as security for the payment of the principal of and the interest on any bonds so issued and any agreements made in connection therewith, whether then owned or thereafter acquired, and to pledge the revenues and receipts therefrom or from any thereof.

(25) To enter into contracts, agreements, options, leases, loan agreements, deeds, and other instruments, and to take other actions as may be necessary or convenient to accomplish any purpose for which an authority is organized or to exercise any power expressly granted hereunder.

(26) To enter into contracts, agreements, leases, or other instruments, either independently or through another entity, to design, develop, construct, own, or operate any commercial facility and to use any revenue from the operation of the facility to fund projects and operations in support of the authority's mission, including the payment of any debt of the authority. The power provided in this subdivision shall include the power to make advance payments to third parties

for services related to the development of the facility.

(b) Contracts of an agriculture authority shall be executed in the name of the authority by the chair and attested by the secretary of the authority. The board may provide by resolution for a different form for the execution of a contract by an officer or agent other than the chair and secretary. A contract, irrespective of its form and of the persons executing the contract, shall not be binding unless the contract is authorized or ratified by the board.

(c) An agriculture authority may deposit its funds not needed to meet expenses or obligations in any bank or building and loan association, provided the deposit is fully insured by a federal corporation or agency of the federal government insuring deposits in financial institutions.

(d) In exercising the powers enumerated in this section, all mortgages, contracts, judgments, investments, loans, debts, and other obligations of any sort of the authority due to any third party shall be recovered and enforced only against the authority unless the county commission approving the formation of the authority specifically agrees to accept the obligation by a separate affirmative vote of a majority of the members of the county commission.

(e) In addition to all other powers at any time conferred on it by this section or otherwise by law, an authority shall have the following powers together with all powers incidental thereto or necessary to the discharge thereof in corporate form:

(1) To participate: As a shareholder in a corporation; as a joint venturer in a joint venture, whether the joint venture is to be memorialized contractually or through the formation of one or more separate business entities; as a general or limited partner in a limited partnership or a general partnership; as a member in a nonprofit corporation or limited liability company; or as a member of any other lawful form of business organization, that may be involved in the development or operational activities of any buildings, structures, facilities, and other improvements that the board of directors of the authority determines are appropriate, useful, or expedient to the authority's purposes. In connection with the foregoing, an authority may elect or appoint an individual or individuals to a governing body and enter into contracts or other agreements with other parties for the development, operation, design, marketing, maintenance, and use of any facilities upon the terms as the board of directors of the authority determines are appropriate, useful, or expedient to the authority's purposes. Any determination by the authority shall be conclusive.

(2) To make or arrange for loans, contributions to capital, and other debt and equity financing for the activities of any corporation of which the authority is a shareholder; any joint venture in which the authority is a joint venture; any limited partnership or general partnership of which the authority is a general or limited partnership; any nonprofit corporation in which the authority is a member of any other lawful form of business organization of which the

authority is a member; and to guarantee loans, issue bonds, or incur other forms of indebtedness on behalf of the corporation, joint venture, partnership, nonprofit corporation, or other business entity, for such purposes. An authority may loan funds that include seller financing arrangements whereby the authority is a seller to other governmental entities or other business entities whether for profit or nonprofit and whether affiliated or non-affiliated with the authority, upon the terms as the authority shall determine appropriate, useful, or expedient for the authority's purposes and the determination by the authority shall be conclusive.

(3) To create, establish, acquire, operate, or support subsidiaries and affiliates, either for profit or nonprofit, to assist the authority in fulfilling its purposes.

(4) To create, establish, or support nonaffiliated for profit or nonprofit corporations or other lawful business organizations that operate and have as their purposes the furtherance of the authority's purposes.

(5) Without limiting the generality of the preceding subdivisions, to accomplish and facilitate the creation, establishment, acquisition, development, operation, or support of any subsidiary, affiliate, nonaffiliated corporation, or other lawful business organization by means of loans of funds, leases of real or personal property, gifts and grants of funds, or guarantees of indebtedness of the subsidiaries, affiliates, and non-affiliated corporations.

(6) In addition to any other authority to enter into

contracts, to enter into contracts, agreements, or understandings with any other public and private parties including, but not limited to, the following:

a. Design-build, design-build-operate, design-build-own-operate, design-build-own-operate-maintain, design-build-finance-operate-maintain, or other similar arrangements or agreements pursuant to which the design, right-of-way acquisition, relocation of structures or utilities, construction, financing, ownership, management, maintenance, and operation, or any combination thereof of a project is accomplished by or on behalf of the authority.

b. Leases, licenses, franchises, concessions, or other agreements for the development, operation, management, or undertaking of all or any part of a project of or on behalf of the authority.

(7) Notwithstanding any provision of law to the contrary, proposals under this subsection may be evaluated and awarded by the authority based on qualifications of participants or best value, or both, as evaluated by procedures of the authority and taking into consideration the best interests of the authority. Evaluation criteria for a contract procured pursuant to the preceding sentence shall be set forth in the request for proposal for the contract. The contract may also be awarded through any existing procurement authority, proposals, or other means of procurement otherwise available to the authority."

Section 2. This act shall become effective on June 1, 2024.