

SB330 INTRODUCED



1 SB330
2 JPTZ7FY-1
3 By Senators Roberts, Waggoner, Shelnuttt
4 RFD: County and Municipal Government
5 First Read: 17-Apr-25



4 SYNOPSIS:

5 Existing law specifies the composition, manner
6 of appointment, and length of terms of members of
7 municipal water works boards that, on January 1, 2015,
8 or thereafter serve customers or have assets in four or
9 more counties other than the county where the
10 authorizing municipality is located.

11 This bill would further provide for the
12 composition, manner of appointment, and length of terms
13 of the members of these municipal water works boards.

14 This bill would provide certain qualifications
15 for board members as well as place limits on the
16 employment of a former board member by the board.

17 This bill would provide for the conversion of
18 these municipal water works boards into regional
19 boards.

20 Existing law also provides a procedure for and
21 circumstances under which these water works boards may
22 amend their articles of incorporation.

23 This bill would further provide for the amending
24 of these boards' articles of incorporation.

25 This bill would place these boards under the
26 ethics laws of Alabama and provide for yearly training
27 on the subject.

28 This bill would provide duties and unlawful



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actions of the board and for the enforcement of violations thereof.

This bill would require these boards to retain a consulting engineer to advise the board.

This bill would require these boards to prepare certain financial and statistical records to be made available to the public.

This bill would also repeal certain sections of the Code of Alabama 1975, relating to these municipal water works boards.

A BILL

TO BE ENTITLED

AN ACT

Relating to municipal water works boards; to amend Section 11-50-300, Code of Alabama 1975; to add Sections 11-50-300.01, 11-50-300.02, 11-50-300.03, 11-50-300.04, 11-50-300.05, 11-50-300.06, 11-50-300.07, 11-50-300.08, 11-50-300.09, and 11-50-300.10 to the Code of Alabama 1975; to further provide for the composition, manner of appointment, and length of terms of members of certain municipal water works boards; to provide qualifications for and place limits on the employment of board members; to provide for conversion of these boards to regional boards; to further provide for these boards to amend their articles of incorporation; to subject these boards to the ethics laws of Alabama and require



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training on the subject; to provide duties and unlawful actions of these boards; to require a consulting engineer be retained by a board; to require these boards to produce certain financial and statistical records; and to repeal Sections 11-50-301, 11-50-302, 11-50-303, and 11-50-304, Code of Alabama 1975, relating to certain municipal water works boards.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. (a) The Legislature finds and declares, as the basis of this act, all of the following:

(1) Competent and efficient management of municipal water works boards' potable and raw water systems is strategically important to the health, safety, and economic viability of this state and local governments and the well-being of residents thereof.

(2) Failures in the management of water systems lead to unreasonably high rates that oppress residents and are a barrier to economic development that is vital to improving job opportunities.

(3) Failures in the management of water systems may lead to catastrophic events such as those that have occurred in California; Jackson, Mississippi; Richmond, Virginia; and Detroit, Michigan. Such events may prevent hospitals, fire departments, and other emergency services from operating effectively and result in catastrophic loss of life, property damage, and adverse financial consequences.

(4) Failures of management are more likely to occur in water works boards described in Section 11-50-300, Code of



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Alabama 1975, where the power to appoint a controlling number of the members of a board of directors is vested in a municipality whose voting residents comprise a fraction of the individuals served by the municipally controlled water works board.

(5) Transfers of substantial funds by Alabama municipal water works boards to municipalities appointing all or a majority of their board of directors have been approved by the Alabama Supreme Court in defiance of a founding principle of the United States of America that there should be no taxation without representation.

(b) The Alabama Legislature hereby declares that regional water boards should be operated for the exclusive benefit of their customers and any surplus funds should be used to reduce water rates to the benefit of all customers.

Section 2. Section 11-50-300, Code of Alabama 1975, is amended to read as follows:

"§11-50-300

(a) Notwithstanding any other provisions of law, this division shall apply to any municipal water works board authorized to be incorporated by a municipality which, on January 1, 2015, either served water customers or has assets in four or more counties other than the county where the authorizing municipality is principally located, or after January 1, 2015, either serves water customers or has assets in four or more counties other than the county where the authorizing municipality is principally located, and the organization and operation of the board, shall be subject to



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this division.

(b) The powers and rights provided to a regional board pursuant to this division are cumulative and independent of any powers and rights pursuant to the enabling statute. Except as expressly set forth in this division, this division shall not be construed as a restriction or limitation upon any power, right, or remedy that a board may have pursuant to the enabling statute.

(c) To the extent this division conflicts with any other provision in the enabling statute, this division shall control.

(d) This division does not apply to a municipal utilities board that operates a water works system and an electric distribution system, nor to an entity that serves only wholesale water customers."

Section 3. Sections 11-50-300.01, 11-50-300.02, 11-50-300.03, 11-50-300.04, 11-50-300.05, 11-50-300.06, 11-50-300.07, 11-50-300.08, 11-50-300.09, and 11-50-300.10 are added to the Code of Alabama 1975, to read as follows:

§11-50-300.01

For the purposes of this division, the following terms have the following meanings:

(1) AUTHORIZING MUNICIPALITY. A municipality that authorized the organization of a board that is converted to a regional board pursuant to this division.

(2) BOARD. A board organized pursuant to the enabling statute.

(3) CONVERSION DATE. The date upon which a board is



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converted to a regional board pursuant to this division.

(4) ENABLING STATUTE. Divisions 1 through 3 of Article 8 of Chapter 50 of Title 11.

(5) ENGINEERING BACKGROUND. Capability as evidenced by an engineering degree from an accredited school of engineering and not less than five years experience in an engineering discipline.

(6) ETHICS ACT. Chapter 25 of Title 36.

(7) FINANCIAL BACKGROUND. Capability as evidenced by a successful career in banking or other field in which the candidate under consideration has demonstrated sound financial management skills in connection with long-term debt financing.

(8) GENERAL BUSINESS BACKGROUND. Means well experienced in business affairs, whether related to private, public, or nonprofit entities, of the complexity of the operation of a water or sewer system.

(9) PRINCIPALLY LOCATED. With respect to the location of any authorizing municipality, the county where all or the largest portion of the territory of the authorizing municipality is located.

(10) REGIONAL BOARD. A board that meets the requirements of Section 11-50-300(a).

(11) SPONSORING MAYOR. The mayor of the authorizing municipality of a board that has been converted to a regional board pursuant to this division.

§11-50-300.02

(a) On the effective date of the act adding this section, a board that meets the requirements of Section



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11-50-300(a) as of the date of filing the bill adding this section shall be converted to a regional board.

(b) A board that meets the requirements of Section 11-50-300(a) after the date of filing the bill adding this section shall be converted to a regional board 30 days after the board meets the requirements, but not before the effective date of this act.

(c) If the certificate of incorporation or bylaws of a regional board conflicts with this division, this division shall control.

§11-50-300.03

(a) The term of the existing directors of the board of directors shall terminate on the conversion date, notwithstanding the term or terms for which the existing directors were appointed or elected. The term of office for directors appointed pursuant to this division shall begin on the conversion date, or if any such appointment is made after the conversion date, on the date of filing for the appointment order with the judge of probate as provided in subsection (b).

(b) Appointment of a director shall be evidenced by an order acknowledged before an officer authorized by the laws of this state to take acknowledgment of deeds and shall be filed in the office of the judge of probate where the board's original certificate of incorporation was filed and in the Office of the Secretary of State.

(c) (1) The board of directors of a regional board shall be reorganized and comprised as follows:

a. One director, who shall have a financial background,



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in addition to a general business background, shall be appointed by the sponsoring mayor.

b. One director, who shall have a financial background, in addition to a general business background, shall be appointed by the Lieutenant Governor.

c. One director, who shall have an engineering background, in addition to a general business background, shall be appointed by the president of the governing body of the county in which the authorizing municipality is principally located.

d. One director, who shall have a general business background, shall be appointed by the governing body of each county in which the regional board owns a major reservoir located principally within the county.

e. One director, who shall have a general business background, shall be appointed by the governing body of the county, other than the county where the authorizing municipality is principally located, where the largest number of accounts serving water customers are located outside the county in which the authorizing municipality is located.

(2) All directors shall be residents of a county in which the regional board serves customers.

(3) Elected public officials may be appointed as directors.

(4) An appointing authority, if an individual, may appoint himself or herself, or, if a group of individuals, may appoint a member of the group.

(5) An individual who has had a business relationship



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with the regional board in the two-year period prior to appointment, or who was employed by a firm that has had a business relationship with the regional board in the two-year period prior to appointment, shall not be appointed as a director.

(d) The appointing authority may exercise discretion in determining whether an individual appointed as a director meets the qualifications provided in this section. Any individual appointed as a director shall be presumed qualified unless and until a court of competent jurisdiction makes a final determination, from which no further appeal is available, that such individual is not qualified as a director. The official acts of any individual appointed as a director shall be valid and binding as official acts of a director for all purposes, whether or not that individual is subsequently determined by a court of competent jurisdiction to be qualified or not.

(e) Each director shall serve for a term of five years, except the initial directors shall serve terms as follows:

(1) The initial director appointed by the sponsoring mayor shall serve a term of one year.

(2) The initial director appointed by the Lieutenant Governor shall serve a term of two years.

(3) The initial director appointed by the president of the governing body of the county in which the authorizing municipality is principally located shall serve a term of three years.

(4) The initial director appointed by the governing



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body of each county in which the regional board owns a major reservoir located principally within the county shall serve a term of four years.

(5) The initial director appointed by the governing body of the county, other than the county where the authorizing municipality is principally located, where the largest number of accounts serving water customers are located outside the county in which the authorizing municipality is located shall serve a term of five years.

(f) The initial appointments to the regional board shall be made by the appointing authorities not more than 20 days after the effective date of this act. Subsequent appointments, if made to fill a vacancy caused other than by the expiration of a term of office, shall be filled within 30 days of the appointing authority receiving notice of the vacancy. Subsequent appointments, if made to fill a vacancy caused by the expiration of a term of office, shall be filled within seven days after the expiration of the term of office. If an appointing authority fails to make an appointment within the time periods provided by this subsection, the Secretary of State shall appoint one of the nominees submitted pursuant to subsection (m).

(g) An individual appointed to fill a vacancy on the board shall serve the remainder of the term of the vacant seat. All directors shall continue to serve until a successor is appointed and qualified.

(h) A director may not serve for more than two full terms. In addition to the two full terms, a director may serve



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one additional partial term in the event a director is first appointed to a term that terminates less than five years after the date of his or her appointment.

(i) Any director may be removed for good cause by the appointing authority who appointed the director if the appointing authority conducts a hearing that gives the director an opportunity to address the cause or causes for removal.

(j) Each director shall be entitled to receive compensation of two thousand dollars (\$2,000) per month, adjusted annually for increases in the consumer price index, as well as reimbursement for necessary expenses actually incurred by him or her in connection with the performance of his or her duties.

(k) A majority of directors then serving shall constitute a quorum for the transaction of business of the board of directors and any meeting of the board of directors may be adjourned by a majority of the members present. No vacancy in the membership of the board of directors shall impair the right of a quorum to exercise all powers and perform all duties of the board of directors.

(l) The board of directors shall adopt and maintain bylaws, not inconsistent with this division, for the regulation and conduct of its affairs and the operation of the regional board. The bylaws of the board of directors may provide for such committees as the board of directors deems necessary or desirable to make recommendations to the full board of directors.



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(m) Members of the Alabama Legislature whose district encompasses areas served by a regional board, and organizations incorporated in this state that have existed for more than five years and that promote economic development in any county served by a regional board, may nominate qualified individuals to serve on a regional board in positions that are vacant or expected to be vacant. Nominations shall be made by submitting in writing the name and qualifications of the individual being nominated to the appointing authority for the position and to the Secretary of State.

(n) The Attorney General shall review the qualifications of all appointees to a regional board and upon finding that any appointee is not qualified, shall file a complaint in the Circuit Court of Montgomery County, which shall have exclusive jurisdiction of the matter, seeking to declare the appointee not qualified and the regional board position vacant. Vacancies on a regional board resulting from a ruling by the court favorable to the Attorney General shall be filled by the designated appointing authority. Upon request, the Attorney General may render an opinion on the qualifications of a proposed appointee.

§11-50-300.04

(a) A regional board shall amend its certificate of incorporation after the conversion date to acknowledge that the regional board has met the requirements of Section 11-50-300(a), change its name to reflect the regional nature of the regional board, and make any other amendment that is not inconsistent with this division or the enabling statute.



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(b) An amendment of the regional board's certificate of incorporation shall be made in the following manner:

(1) The board of directors of the regional board shall first adopt a resolution setting forth in full the proposed amendment to the certificate of incorporation.

(2) The amendment shall recite the adoption of the resolution by the board of directors.

(3) After the amendment is executed by the chair or vice chair of the regional board and acknowledged before an officer authorized by the laws of this state to take acknowledgment of deeds, the amendment shall be filed in the office of the judge of probate where the board's original certificate of incorporation was filed. The amendment shall be effective upon filing.

§11-50-300.05

(a) Directors and employees of a regional board shall be subject to the Ethics Act.

(b) Each year all directors shall participate in 10 hours of training on the duties and best practices of directors of organizations engaged in the operation of water or sewer systems, the obligations of directors under the Ethics Act, and the reporting requirements under this division.

§11-50-300.06

(a) A regional board shall assure that the rates for water and other services are reasonable and that industry best practices are followed. A regional board shall assure that the regional board operates its system or systems efficiently, in



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compliance with applicable laws and regulations, including this division, and exclusively for the benefit of the customers of the regional board.

(b) In assessing compliance with industry best practices, a regional board shall reference the standards published by the American Water Works Association or any successor thereto and standards followed by highly rated water systems.

(c) (1) A regional board may not make payments to any municipality, county, or other entity except for reasonable consideration in payment for goods or services required in the operation or management of the systems operated by the regional board.

(2) The Attorney General shall enforce this subsection by filing a complaint seeking to prevent or to recoup amounts paid by the regional board in violation of this subsection and to obtain other remedies as may be appropriate under the circumstances, in the Circuit Court of Montgomery County, which shall have exclusive jurisdiction of the matter.

§11-50-300.07

(a) A regional board shall follow best practices in preparing or causing to be prepared financial statements and other reports, including all of the following:

(1) An annual budget in monthly form.

(2) Monthly financial statements with comparison to the budget.

(3) Annual financial statements with comparison to the budget.



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(4) Annual financial statements audited by an independent auditor.

(5) A five-year operating plan with annual revisions and appropriate comparisons of actual performance to plan.

(6) A 10-year capital plan, including a plan to fund the capital expenditures called for in the capitol plan, and a 10-year estimate of rates per year required to fund operating expenses, capitol expenditures, and debt service.

(7) Monthly and annual statistical reports to include the number of employees, number of customer connections by major geographical location, number of miles of pipe replaced as a percent of total miles of pipe in a system, volume of treated and untreated water introduced into transmission mains, volume of treated and untreated water billed to customers, and the number of leaks repaired.

(8) Monthly and annual schedules of professionals employed other than through a public bid process pursuant to exceptions to competitive bid laws, brief descriptions of their scopes of work, and amounts paid monthly, year-to-date, and for the preceding 12 months.

(9) Prior to the adoption of each annual budget of a regional board, a report on the current staffing of the regional board to include a job description of each position, the number of individuals filling each position, the average annual compensation paid to the individuals in each position, and proposed changes in staffing and compensation anticipated in the annual budget to be adopted, together with comparisons as may be available between the staffing of the regional board



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and the staffing of other comparable water systems.

(b) All financial statements and other reports shall be accompanied by appropriate operating statistics, actual, and projected.

(c) All statistical and financial reports shall include historical statistics and financial information to the extent available and necessary to place recent information in historical context and a full description and disclosure of all assumptions made in the preparation of the reports.

(d) The reports required by this section shall be made available by paper copy and email to the state legislators representing the counties in which the regional board operates and the Department of Examiners and Public Accounts. The reports shall also be made available to the public on a website maintained by the regional board.

§11-50-300.08

(a) A regional board shall retain a consulting engineer with a national reputation for providing high quality engineering services to water systems. The consulting engineer shall provide the services specified in a professional services agreement which shall include all of the following services:

(1) From time to time but not less frequently than annually, an assessment of and comments on the regional board's compliance with Section 11-50-300.07, including separate assessments and comments on each of the financial statements and reports required by Section 11-50-300.07.

(2) Prior to the approval by the regional board of a



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capital project costing two million dollars (\$2,000,000) or more, an assessment and report on the necessity, concept, design, and expected operating and capital cost of the project.

(3) Prior to the approval by the regional board of any financing, a report and opinion in customary form on the ability of the board to pay the interest on and principal of the loan or securities comprising the financing when due.

(4) Annually, and prior to any increase in rates or other service charges, an analysis and report on the reasonableness of existing and proposed rates and service charges, taking into consideration the factors listed in Section 11-50-300.06, any factors widely adopted in the regulation of utilities in the United States, and any other factors that the consulting engineer deems relevant.

(b) A consulting engineer shall be selected by a regional board pursuant to a nationwide search and a request for proposals addressed to not less than five of the largest providers of engineering services to water systems in the United States. The request for proposals shall be posted on the regional board's website and copies of responses shall be available upon request. A regional board shall select a consulting engineer from those submitting proposals based on the recommendations of clients, relevant experience, credentials of the engineers to be assigned to the project, terms of a proposed engagement agreement, and cost.

(c) Once selected, a consulting engineer shall serve five years and shall be eligible to be re-selected for one



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additional five year term notwithstanding the selection procedures provided by this section.

(d) A consulting engineer shall be disqualified from providing project engineering services on projects undertaken by a regional board but shall review and comment on plans and specifications prepared by other engineers for such projects. A consulting engineer shall evaluate, on behalf of the regional board, the qualifications of engineers under consideration to provide project engineering services to a regional board.

(e) A consulting engineer may be discharged by a regional board for a material failure to perform as determined by the board after adequate notice and a hearing.

§11-50-300.09

For a period of 24 months after an individual ceases to be a director of a regional board, that individual may not be employed by the regional board or by any firm that performs work for the regional board.

§11-50-300.10

(a) A regional board shall employ a chief executive officer with full authority to manage the operations of the regional board, subject to policy directives and other governance decisions adopted by the board of directors. Employees of a regional board shall report directly or through subordinates who report to the chief executive officer and may not be ordered or instructed by a director of the board. Employment contracts, construction contracts, consulting contracts, engineering contracts, and other contracts between



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the regional board and other persons shall be recommended by the chief executive officer, except for the employment contract of the chief executive officer, which shall be recommended by the board of directors. The chief executive officer shall recommend to the board of directors individuals to serve as chief financial officer and other executive level employees.

(b) The employment contract of the chief executive officer shall provide for a fixed term of office that may be extended with or without modification of other terms by agreement of the board of directors and the chief executive officer. The board of directors may terminate the employment of the chief executive officer for a material failure to perform his or her duties after providing reasonable notice of a failure and the opportunity for a hearing thereon.

Section 4. Sections 11-50-301, 11-50-302, 11-50-303, and 11-50-304, Code of Alabama 1975, relating to certain municipal water works boards, are repealed.

Section 5. This act shall become effective immediately.