FREE CONFERENCE COMMITTEE REPORT ADOPTED -- NOT PRINTED

June 21, 2012

**H. 3790**

Introduced by Rep. Sellers

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Read the first time March 15, 2011.

**A** **BILL**

TO CREATE THE BAMBERG COUNTY WATER AND SEWER AUTHORITY; TO PROVIDE FOR ITS DUTIES, RESPONSIBILITIES, AND POWERS; AND TO PROVIDE FOR THE APPOINTMENT AND TERMS OF THE AUTHORITY’S MEMBERS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. There is created the Bamberg County Water and Sewer Authority, hereinafter referred to as the “authority”. Its service area shall include all of Bamberg County, excluding areas within incorporated municipalities. It must be the function of the authority to acquire supplies of fresh water, capable of being used for industrial and domestic purposes, and to distribute the water pursuant to this section for industrial and domestic use within its service area. The authority must be empowered to construct reservoirs, diversion dams, impounding dams, or dikes, canals, conduits, aqueducts, tunnels, water distribution facilities, water mains and water lines that it deems necessary, and to acquire the land, rights of way, easements, machinery, apparatus, and equipment that is necessary for that construction.

SECTION 2. The authority must be composed of eleven members who must be resident electors of Bamberg County, and who must be appointed by the Governor, six of whom must be appointed upon the recommendation of a majority of the members of the Bamberg County Council; one of whom must be appointed upon the recommendation of the mayor of Bamberg; one of whom must be appointed upon the recommendation of the mayor of Denmark; one of whom must be appointed upon the recommendation of the mayor of Olar; one of whom must be appointed upon the recommendation of the mayor of Govan; one of whom must be appointed upon the recommendation of the mayor of Ehrhardt. Of the members originally appointed upon the recommendation of the Bamberg County Council, two must be appointed for a term of two years, two for a term of four years, and two for a term of eight years. Of the members originally appointed upon the recommendation of the mayors of the various municipalities, all five members must be appointed for a term of six years. Upon the termination of the terms of the original members, their successors must be appointed by the Governor, in the same manner as provided for the original appointments, for terms of six years. A vacancy occurring by reason of death, resignation, or otherwise must be filled for the remainder of the unexpired term by appointment of the Governor in the same manner as provided for the original appointment. All members of the authority shall hold office until their successors are appointed and qualified.

SECTION 3. Members of the authority shall receive no compensation, but may be reimbursed for actual expenses incurred in connection with the business of the authority.

SECTION 4. The authority shall elect a chairman, vice chairman and a secretary. The terms of office of these officers must be for a period determined by the bylaws of the authority.

SECTION 5. The secretary of the authority periodically shall file in the office of the Clerk of Court for Bamberg County the appropriate certificates showing the personnel of the authority and the duration of the terms of its members.

SECTION 6. The authority shall not unduly compete with existing publicly operated water systems in the county or sell water within the corporate limits of the municipalities or areas now served by municipalities without the consent of the municipal officers of the municipalities. The authority shall not sell water anywhere other than Bamberg County that is defined as the service area of the authority.

SECTION 7. (A) The authority is fully empowered to acquire, construct, operate, maintain, improve, and extend facilities that would enable it to obtain fresh water in large volume, and to distribute and sell that water pursuant to Section 6 of this act, to persons, firms, corporations, municipal corporations, political divisions, and the United States government, or an agency of the United States government within its service area.

(B) The authority, acting through its governing body, has the power to:

(1) have perpetual succession;

(2) sue and be sued;

(3) adopt, use and alter a corporate seal;

(4) define a quorum for meetings;

(5) maintain a principal office;

(6) make bylaws for the management and regulation of its affairs;

(7) build, construct, maintain and operate ditches, tunnels, culverts, flumes, conduits, mains, pipes, dikes, dams and reservoirs;

(8) build, construct, maintain and operate distribution systems for the distribution of water for domestic or industrial use;

(9) acquire and operate any type of machinery, appliances or appurtenances, necessary or useful in constructing, operating and maintaining the system;

(10) contract for or otherwise acquire a supply of water and sell water for industrial or domestic use;

(11) prescribe rates and regulations under which such water shall be sold for industrial and domestic use;

(12) enter into contracts of long duration for the sale of water with persons, private corporations, municipal corporations or public bodies or agencies;

(13) prescribe the regulations necessary to protect from pollution all water in its pipes, tanks, reservoirs, distribution systems, or elsewhere within its system. Prior to the adoption of a regulation, the authority shall hold a public meeting for the consideration of the regulation, and shall advertise in a newspaper of general circulation in the authority the time and place of the meeting, the general nature, and the scope of the regulation to be considered for adoption. The notice must be published on two occasions prior to the meeting, and at least ten days before the meeting;

(14) make contracts and execute all instruments necessary for carrying on of the business of the authority, including contracts and franchise agreements with nonprofit corporations to provide water and sewerage service for periods up to forty years;

(15) acquire, purchase, hold, use, lease, mortgage, sell, transfer and dispose of property, real, personal or mixed, or any interest in the property;

(16) make use of county and state highway rights of way in which to lay pipes and lines in a manner and under conditions that appropriate officials shall approve;

(17) make use of all the streets and public ways of an incorporated municipality for the purpose of laying pipes and lines, subject to the limitations of Section 15, Article VIII, of the Constitution of this State;

(18) alter and change county and state highways wherever necessary to construct the system under the conditions that the appropriate officials in charge of the highways shall approve;

(19) exercise the power of eminent domain for a corporate function. The power of eminent domain may be exercised pursuant to Sections 28‑5‑10 through 28‑5‑390 and 57‑5‑310 through 57‑5‑590. The provisions of this item shall not apply to public utilities and railroads which have the power of eminent domain;

(20) appoint officers, agents, and employees to prescribe the duties of, to fix their compensation, and to determine the amount of their bondedness;

(21) make contracts for construction and other services; however these contracts must be based on competitive bidding and must be awarded to the lowest responsible bidder;

(22) borrow money, make and issue negotiable bonds, notes, and other evidences of indebtedness, payable from the revenues derived from the operation of its system. The sums borrowed may be those needed to pay all costs incident to the construction and establishment of the system, and any extensions, additions, and improvements to the system, including engineering costs, legal costs, construction costs; the sum needed to pay interest during the period prior to which the system or any extension, addition or improvement to, must be fully in operation; such sum as is needed to supply working capital to place the system in operation; and all other expenses that the authority may incur in establishing, extending or enlarging the system. Neither the full faith and credit of the State of South Carolina, nor the county, must be pledged for the payment of the principal and interest of the obligations, and there must be on the face of each obligation a statement, plainly worded, to that effect. Neither the members of the authority, nor a person signing the obligations, must be personally liable. To the end that a convenient procedure for borrowing money may be prescribed, the authority must be fully empowered to avail itself of all powers granted by Chapters 17 and 21 of Title 6, as now or hereafter constituted, it being the intent of this provision that further amendments and modifications of the code provisions must be deemed to amend and revise correspondingly the powers granted by this paragraph. In exercising the power conferred upon the authority by the code provisions, the authority may make or omit all pledges and covenants authorized by any provision of it, and may confer upon the holders of its securities all rights and liens authorized by law.

Notwithstanding contrary provisions in the code, the authority may:

(a) disregard a provision requiring that bonds have serial maturities, and issue bonds in such form and with such maturities as the authority shall determine;

(b) provide that its bonds, notes or other evidence of indebtedness be payable, both as to principal and interest, from the net revenues derived from the operation of its system, as such net revenues may be defined by the authority;

(c) covenant and agree that upon it being adjudged in default as to the payment of any installment of principal or interest upon any obligation issued by it, or in default as to the performance of any covenant or undertaking made by it, in such event the principal of all obligations of such issue may be declared forthwith due and payable, notwithstanding that any of them may not have then matured;

(d) confer upon a corporation trustee the power to make disposition of the proceeds from all borrowings and of all revenues derived from the operation of the system, in accordance with the resolution adopted by the authority as an incident to the issuance of any notes, bonds or other types of securities;

(e) dispose of bonds, notes or other evidence of indebtedness at public or private sale, and upon such terms and conditions as it shall approve;

(f) make provision for the redemption of any obligations issued by it prior to their stated maturity, with or without premium, and on such terms and conditions as the authority shall approve;

(g) covenant and agree that any cushion fund established to further secure the payment of the principal and interest of any obligation shall be in a fixed amount;

(h) covenant and agree that no free service will be furnished to any person, municipal corporation, or any subdivision or division of the State;

(i) prescribe the procedure, if any, by which the terms of the contract with the holders of its obligations may be amended, the number of obligations whose holders must consent thereto, and the manner in which such consent shall be given;

(j) prescribe the events of default and the terms and conditions upon which all or any obligations shall become or may be declared due before maturity and the terms and conditions upon which such declarations and their consequences may be waived;

(23) extend its system or systems beyond the defined limits of the authority, within or without the county, but contiguous to the authority, to provide services to those living outside the authority and outside any incorporated municipality when, in the discretion of the board, it is feasible and practicable so to do, in which case any person or agency receiving such service shall be subject to the same rules, regulations and requirements concerning services being received from the authority as persons residing within the authority. The board may, in its discretion, establish rates and charges higher than those within the authority for the extension of its system and the provision of services beyond the limits of the authority.

SECTION 8. The rates charged for services furnished by the authority must not be subject to supervision or regulation by a state bureau, board, commission, or agency of the State.

SECTION 9. All property of the authority must be exempt from ad valorem taxes levied by the State, county, or a municipality, division, subdivision, or agency of the State.

SECTION 10. The authority’s fiscal year shall coincide with the fiscal year of the State. Immediately following the end of the fiscal year on June thirtieth, a certified public accountant appointed by the authority shall complete an audit of the authority. The audit report must be incorporated into an annual report of the authority, and must be filed in the office of the Clerk of Court for Bamberg County and with the Secretary of State.

SECTION 11. It is unlawful for a person to wilfully injure, destroy, hurt, damage, tamper with, or impair the facilities of the authority, or any machinery, apparatus, or equipment of the authority. It is unlawful to pollute the water in any part of the authorities service area, or to obtain water from it except in accordance with the regulations promulgated by the authority. A person committing such an offense must be deemed guilty of a misdemeanor and upon conviction must be fined not less than ten dollars nor more than one hundred dollars, or must be liable to pay all damages suffered by the authority.

SECTION 12. All revenues derived by the authority from the operation of its facilities, which may not be required to discharge covenants made by it in issuing bonds, notes, or other obligations authorized by this act, must be disposed of by the authority from time to time for purposes germane to the functions of the authority, or in a manner the General Assembly may direct.

SECTION 13. All municipalities, public bodies, public agencies operating water district systems in and adjacent to Bamberg County must be fully empowered to enter into contracts to buy water from the authority. These contracts shall extend over a period of time and shall contain terms and conditions mutually agreeable to the authority and to the contracting municipality, public body, or public agency. No municipality or other agency operating a water system shall extend its present facilities beyond the corporate limits of a municipality or current service area without prior written approval of the authority.

SECTION 14. This act takes effect upon approval by the Governor.

/s/Sen. C. Bradley Hutto /s/Rep. Bakari T. Sellers

/s/Sen. John W. Matthews, Jr. /s/Rep. Lonnie Hosey

/s/Sen. Phillip W. Shoopman /s/Rep. James Merrill

On Part of the Senate. On Part of the House.

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