

1 HB47
2 176440-2
3 By Representative Buskey
4 RFD: Economic Development and Tourism
5 First Read: 07-FEB-17
6 PFD: 01/25/2017

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8 SYNOPSIS: Under existing law, there is a process for
9 establishing community development districts that
10 meet certain requirements. Once established, the
11 sale of alcoholic beverages is authorized within
12 the district by certain entities otherwise licensed
13 by the Alcoholic Beverage Control Board.

14 This bill would create an additional class
15 of community development district and provide for
16 the incorporation and powers of the district.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 To amend Sections 35-8B-1, 35-8B-2, and 35-8B-3,
23 Code of Alabama 1975, as amended by Act 2016-222, 2016 Regular
24 Session, relating to community development districts; to
25 create an additional class of community development district;
26 and to provide for the incorporation and powers of the
27 district.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 35-8B-1, 35-8B-2, and 35-8B-3,
3 Code of Alabama 1975, as amended by Act 2016-222, 2016 Regular
4 Session, are amended to read as follows:

5 "§35-8B-1.

6 "(a) "Community development district" shall mean a
7 private residential development that: (1) Is a size of at
8 least 250 acres of contiguous land area; (2) has at least 100
9 residential sites, platted and recorded in the probate office
10 of the county as a residential subdivision; (3) has streets
11 that were or will be built with private funds; (4) has a
12 social club with: (i) an 18-hole golf course of regulation
13 size; (ii) a restaurant or eatery used exclusively for the
14 purpose of preparing and serving meals, with a seating
15 capacity of at least 60 patrons; (iii) social club memberships
16 with at least 100 paid-up members who have paid a membership
17 initiation fee of not less than two hundred fifty dollars
18 (\$250) per membership; (iv) membership policies whereby
19 membership is not denied or impacted by an applicant's race,
20 color, creed, religion, or national origin; and (v) a
21 full-time management staff for the social activities of the
22 club, including the management of the premises where food and
23 drink are sold.

24 "(b) "Community development district" also means
25 privately owned property used for social purposes that: (1) Is
26 a size of at least 250 acres of contiguous land area; (2) is
27 located in a dry county that has one or more wet

1 municipalities, but outside the corporate limits of any
2 municipality; (3) is a social club with: (i) An 18-hole golf
3 course of regulation size; (ii) a marina and boat storage
4 facility with at least 35 spaces; (iii) a clubhouse with more
5 than 20,000 square feet; (iv) a restaurant or eatery used
6 exclusively for the purpose of preparing and serving meals,
7 with a seating capacity of at least 88 patrons; (v) at least
8 600 paid-up golf or social members who have paid a membership
9 initiation fee of not less than two thousand dollars (\$2,000)
10 per family or individual membership; (vi) membership policies
11 whereby membership is not denied or impacted by an applicant's
12 race, color, creed, religion, or national origin; and (vii) a
13 full-time management staff for the social activities of the
14 club, including the management of the premises where food and
15 drink are sold.

16 "(c) In addition to the limitations specified in
17 Section 35-8B-3, with regard to a community development
18 district defined in subsections (a) and (b) of this section,
19 alcoholic beverages shall be sold only for on-premises
20 consumption, as defined in Section 35-8B-3 (3), and in regard
21 to a community development district defined in subsection (b),
22 alcoholic beverages shall not be sold within 3,000 feet of the
23 south right-of-way of any state or federal highway adjacent to
24 any such district.

25 "(d) "Community development district" also means a
26 private residential development that may or may not include
27 additional contiguous privately-owned property used for

1 residential, social, commercial, or charitable purposes that:
2 (1) Is the size of at least 650 acres of contiguous land area,
3 but may also contain non-contiguous land if so divided by a
4 public highway which shall be made part of the district per
5 the articles of establishment; (2) is located in a dry county
6 that has one or more wet municipalities, but may be outside
7 the corporate limits of any municipality or within the
8 corporate limits of a municipality; (3) has the following: (i)
9 At least a 9-hole golf course; (ii) an amenity complex to
10 include a fitness center and a swimming pool; (iii) a
11 clubhouse with at least 7,000 square feet; (iv) a restaurant
12 or eatery used for the purpose of preparing and serving meals,
13 with a seating capacity of at least 50 patrons; (v) a
14 recreational lake of at least 30 acres; (vi) at least 200
15 paid-up golf or club memberships paid initially by either the
16 developer, residential landowners, or commercial entities
17 located within the district at the rate of at least five
18 hundred dollars (\$500) per membership provided the developer
19 reserves the right through residential and commercial lease
20 and purchase agreements to require additional membership and
21 initiation fees and further provided the developer has the
22 discretion to restrict use of the golf course to district
23 landowners and guests or at the developer's discretion to
24 extend use of the golf course to the general public subject to
25 fees set and determined by the developer which may differ from
26 fees applicable to residential and commercial lease and
27 purchase agreements; and (vii) membership policies whereby

1 membership is not denied or impacted by an applicant's race,
2 color, religion, or national origin; (4) may include a
3 multi-purpose use entertainment facility with a minimum
4 capacity to accommodate at least 7,500 patrons; and (5) may
5 include commercial establishments. Notwithstanding any other
6 provisions of law, the sale and distribution of alcoholic
7 beverages, including draft or keg beer, by licensees of the
8 Alcoholic Beverage Control Board shall be authorized in a
9 community development district defined under this subsection
10 and Section 35-8B-3 shall not apply.

11 "(e) "Community development district" also means a
12 commercial district located in a wet county that does not
13 authorize Sunday sales and outside the corporate limits and
14 police jurisdiction of any municipality and which has a
15 restaurant with a seating capacity of at least 120, a
16 grocery-delicatessen, riding stables and riding trails, a
17 community information center, outdoor programming activities,
18 and rural lifestyle demonstrations.

19 "(f) "Community development district" also means a
20 commercial district located in a wet county that does not
21 authorize Sunday sales, has a restaurant with a seating
22 capacity of at least 120, is adjacent to a marina with at
23 least 34 boat slips, and is located on property where the
24 marina and restaurant are under common ownership.

25 "(g) "Community development district" also means a
26 commercial district that includes a marina located on a river
27 in an unincorporated area of a wet county that does not

1 authorize seven day sales with two separate food and beverage
2 buildings with a combined space of at least 7,500 square feet
3 connected by a boardwalk and separated by a patio with an
4 entertainment stage.

5 "(h) "Community development district" also means a
6 commercial district located in a dry county that shares a
7 geographic border with another state, has an elevation of at
8 least 1,500 feet, and has a recreational waterway, specialty
9 shops and restaurants, summer camps and retreat centers, an
10 art gallery, and annual festivals showcasing the area.

11 "(i) "Community development district" also means a
12 parcel of real property that meets all of the following
13 criteria:

14 "(1) It is owned by the same person or entity.

15 "(2) It consists of not less than 160 acres.

16 "(3) It is located partially in a dry county and
17 partially in a wet county.

18 "(4) It contains a lake of not less than 70 acres
19 with a fishing resort consisting of a rental boathouse,
20 campsites, and a community room.

21 "~~(i)~~ (j) If a community development district is
22 located in any county, including within any wet or dry
23 municipality located within the county, the county shall
24 participate in the distribution of taxes and license fees
25 pursuant to Chapters 3 and 3A of Title 28.

26 "~~(j)~~ (k) Any alcohol revenues received by a county
27 under Act 2007-417 shall offset in an equal amount any T.V.A.

1 in-lieu-of-taxes payments received by the county. Any T.V.A.
2 in-lieu-of-taxes payments replaced by alcohol revenues under
3 this subsection shall be distributed to T.V.A.-served
4 counties.

5 "~~(k)~~(l) If a community development district
6 established prior to June 1, 2014, becomes a new municipality
7 pursuant to Sections 11-41-1 and 11-41-2, the section
8 requiring a vote of the residents of the property described in
9 the petition, the new municipality created thereby shall be
10 wet and the sale and distribution of alcoholic beverages
11 therein shall be authorized to the full extent of any other
12 wet municipality. In addition to the other requirements for
13 incorporating into a municipality set forth in Sections
14 11-41-1 and 11-41-2, the petition shall provide notice to
15 potential voters that if the new municipality is incorporated
16 it shall be wet.

17 "§35-8B-2.

18 "The exclusive and uniform method for the
19 establishment of a community development district shall be by
20 the filing of the articles of establishment of a community
21 development district with the judge of probate of the county
22 in which the district is to be located, or if located in more
23 than one county, of the county wherein is located the largest
24 area of the community development district.

25 "(1) The articles of establishment of a district
26 defined in subsection (a) of Section 35-8B-1 shall contain the
27 following:

1 "a. The written consent to the establishment of the
2 district by the owner or owners of at least 51 percent of the
3 real property to be included in the district, or documentation
4 demonstrating that the petitioner has control by deed, trust
5 agreement, contract, or option of at least 51 percent of the
6 real property to be included in the district.

7 "b. A metes and bounds description of the external
8 boundaries of the district, with a specific metes and bounds
9 description of any real property within the external
10 boundaries of the district which is to be excluded from the
11 district.

12 "c. A schematic layout of the proposed district with
13 a map of the proposed and existing residential subdivisions,
14 streets, and roads in the district, and of the building and
15 grounds to be used in common by members of the club operating
16 in the district, together with a commitment that the owner or
17 owners of the real property located within the district will
18 bear the costs of the construction of such proposed streets
19 and roads, if such proposed roads and streets do not exist on
20 the day the articles of establishment are filed.

21 "d. The proposed name of the district, and the
22 location and the mailing address of the principal office of
23 the district.

24 "e. A designation of five persons to be the initial
25 members of the board of control of the district, two of whom
26 shall serve in that office until replaced by elected members;
27 provided, the two elected members of the board of control

1 shall be elected by the members of the club who may vote in
2 person or by proxy in writing at an annual meeting of the
3 district, which date shall be specified in the petition. Each
4 club member shall be entitled to cast one vote. The two
5 candidates receiving the highest number of votes shall be
6 elected to the board of control for a period of one year, or
7 until his or her successor shall be duly elected. Upon the
8 death or resignation of a non-elected member of the board of
9 control, the remaining board members shall elect, by majority
10 vote at a called board meeting, a new non-elected board
11 member.

12 "(2) The articles of establishment of a district
13 defined in subsections (b) and (d) of Section 35-8B-1 shall
14 contain the following:

15 "a. The written consent to the establishment of the
16 district by the owner of the real property to be included in
17 the district.

18 "b. A metes and bounds description of the external
19 boundaries of the district.

20 "c. A schematic layout of the proposed district with
21 a map of the buildings and grounds to be used in common by the
22 members of the club operating in the district.

23 "d. The proposed name of the district and the
24 location and the mailing address of the principal office of
25 the district.

1 "e. A designation of members of the board of
2 governors of the club operating in the district who shall be
3 the members of the board of control of the district.

4 "(3) The articles of establishment of a district
5 described in Section 35-8B-1(e), (f), (g), ~~or~~ (h), or (i)
6 shall contain the following:

7 "a. The written consent to the establishment of the
8 district by the owner of the real property to be included
9 within the district.

10 "b. A metes and bounds description of the external
11 boundaries of the district.

12 "c. A schematic layout of the proposed district with
13 a map of the buildings and grounds to be used in common by
14 guests in the district.

15 "d. The proposed name of the district and the
16 location and the mailing address of the principal office of
17 the district.

18 "e. A designation of members of the board of
19 governors of the district who shall be elected by the owner of
20 the real property included in the district.

21 "(4) The articles of establishment and two copies
22 thereof shall be delivered to the probate judge who shall,
23 upon the payment of the fees hereinafter prescribed:

24 "a. Endorse on the articles and on each of such
25 copies the word "Filed," and the hour, day, month, and year of
26 the filing thereof.

1 "b. File the articles in his or her office and
2 certify the two copies thereof.

3 "c. Issue a certificate of establishment to which he
4 or she shall affix one certified copy of the articles of
5 establishment, and return such certificate with a certified
6 copy of the articles of establishment affixed thereto to the
7 district.

8 "(5) Upon the filing of the articles of
9 establishment of the community development district with the
10 probate judge, the district's existence shall begin.

11 "(6) In lieu of all other charges and fees for a
12 community development district formed under Section
13 35-8B-1(a), (b), or (d), the probate judge shall charge and
14 collect for filing the articles of establishment and issuing a
15 certificate of establishment, one thousand dollars (\$1,000)
16 payable to the municipality in which is located the largest
17 area of the community development district if located in a
18 municipality, and if not, to the county in which is located
19 the largest area of the community development district and
20 three hundred fifty dollars (\$350) to the county for the
21 purpose of providing additional funds for the office of the
22 probate judge. On or before the anniversary date of the filing
23 of the articles of establishment, excluding the actual year of
24 filing, the board of control shall pay to the probate judge a
25 fee of three hundred fifty dollars (\$350) and a fee of one
26 thousand dollars (\$1,000) payable to the municipality in which
27 is located the largest area of the community development

1 district if located in a municipality, and if not, to the
2 county in which is located the largest area of the community
3 development district for the purpose of providing additional
4 funds for the office of the probate judge.

5 "(7) In lieu of all other charges and fees for a
6 community development district formed under Section
7 35-8B-1(e), (f), (g), ~~or~~ (h), or (i), the judge of probate
8 shall charge and collect a one-time fee for filing the
9 articles of establishment and issuing a certificate of
10 establishment of five hundred dollars (\$500) payable to the
11 county in which is located the largest area of the district
12 for the purpose of providing additional funds to the judge of
13 probate.

14 "§35-8B-3.

15 "(a) If a majority of the board of control of a
16 community development district formed under Section
17 35-8B-1(a), (b), or (d) consents to and approves the sale and
18 distribution of alcoholic beverages within the district, it
19 shall be lawful to sell and distribute alcoholic beverages in
20 the community development district in the following manner and
21 subject to the following terms, definitions, and conditions:

22 "(1) Upon being licensed by the Alabama Alcoholic
23 Beverage Control Board, alcoholic beverages may be sold by the
24 club of the district to members and their guests for
25 on-premises consumption only. The club shall be licensed to
26 sell alcoholic beverages to its members and their guests as a
27 club liquor retail licensee by the Alabama Alcoholic Beverage

1 Control Board, upon the club's compliance with the provisions
2 of the alcoholic beverage licensing code and the regulations
3 made thereunder. The original application shall be accompanied
4 by a certificate from the board of control of the district in
5 which the licensed club is located, consenting to and
6 approving the sale of alcoholic beverages at the club. The
7 club shall not be required to present its application or
8 obtain the consent and approval of any authority other than
9 the Board of Control of the district.

10 "(2) MEMBER. Any person or entity whose membership
11 application has been approved by the club.

12 "(3) ON-PREMISES CONSUMPTION. Consumption on the
13 property of the club, including the club house, the golf
14 course, and other recreational facilities of the club. Sales
15 of alcoholic beverages for on-premises consumption shall be
16 made only by authorized charge to a member's account.

17 "(b) If a majority of the board of control of a
18 community development district formed pursuant to Section
19 35-8B-1(e), (f), (g), ~~or~~ (h), or (i) consents to and approves
20 the sale and distribution of alcoholic beverages within the
21 district for seven days a week, any person within the district
22 licensed by the Alabama Alcoholic Beverage Control Board may
23 sell alcoholic beverages in the district for on-premises
24 consumption."

25 Section 2. This act shall become effective
26 immediately following its passage and approval by the
27 Governor, or its otherwise becoming law.

