

1 SB133
2 199314-2
3 By Senator Livingston
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 06-FEB-20

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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 provide for an additional
15 type of community development district that meets
16 certain conditions in a dry county where the sale
17 of alcoholic beverages is not authorized. Upon
18 incorporation and approval of the board, the sale
19 of alcoholic beverages would be authorized in the
20 district.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

25
26 To amend Sections 35-8B-1, 35-8B-2, and 35-8B-3,
27 Code of Alabama 1975, relating to community development

1 districts; to create an additional class of community
2 development district; and to provide for the incorporation and
3 powers of the district.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 35-8B-1, 35-8B-2, and 35-8B-3,
6 Code of Alabama 1975, are amended to read as follows:

7 "§35-8B-1.

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

26 "(b) "Community development district" also means
27 privately owned property used for social purposes that: (1) Is

1 a size of at least 250 acres of contiguous land area; (2) is
2 located in a dry county that has one or more wet
3 municipalities, but outside the corporate limits of any
4 municipality; (3) is a social club with: (i) An 18-hole golf
5 course of regulation size; (ii) a marina and boat storage
6 facility with at least 35 spaces; (iii) a clubhouse with more
7 than 20,000 square feet; (iv) a restaurant or eatery used
8 exclusively for the purpose of preparing and serving meals,
9 with a seating capacity of at least 88 patrons; (v) at least
10 600 paid-up golf or social members who have paid a membership
11 initiation fee of not less than two thousand dollars (\$2,000)
12 per family or individual membership; (vi) membership policies
13 whereby membership is not denied or impacted by an applicant's
14 race, color, creed, religion, or national origin; and (vii) a
15 full-time management staff for the social activities of the
16 club, including the management of the premises where food and
17 drink are sold.

18 "(c) In addition to the limitations specified in
19 Section 35-8B-3, with regard to a community development
20 district defined in subsections (a) and (b) of this section,
21 alcoholic beverages shall be sold only for on-premises
22 consumption, as defined in Section 35-8B-3 (a)(3), and in
23 regard to a community development district defined in
24 subsection (b), alcoholic beverages shall not be sold within
25 3,000 feet of the south right-of-way of any state or federal
26 highway adjacent to any such district.

1 "(d) "Community development district" also means a
2 private residential development that may or may not include
3 additional contiguous privately-owned property used for
4 residential, social, commercial, or charitable purposes that:
5 (1) Is the size of at least 650 acres of contiguous land area,
6 but may also contain non-contiguous land if so divided by a
7 public highway which shall be made part of the district per
8 the articles of establishment; (2) is located in a dry county
9 that has one or more wet municipalities, but may be outside
10 the corporate limits of any municipality or within the
11 corporate limits of a municipality; (3) has the following: (i)
12 At least a 9-hole golf course; (ii) an amenity complex to
13 include a fitness center and a swimming pool; (iii) a
14 clubhouse with at least 7,000 square feet; (iv) a restaurant
15 or eatery used for the purpose of preparing and serving meals,
16 with a seating capacity of at least 50 patrons; (v) a
17 recreational lake of at least 30 acres; (vi) at least 200
18 paid-up golf or club memberships paid initially by either the
19 developer, residential landowners, or commercial entities
20 located within the district at the rate of at least five
21 hundred dollars (\$500) per membership provided the developer
22 reserves the right through residential and commercial lease
23 and purchase agreements to require additional membership and
24 initiation fees and further provided the developer has the
25 discretion to restrict use of the golf course to district
26 landowners and guests or at the developer's discretion to
27 extend use of the golf course to the general public subject to

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

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

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

1 "(g) "Community development district" also means a
2 commercial district that includes a marina located on a river
3 in an unincorporated area of a wet county that does not
4 authorize seven day sales with two separate food and beverage
5 buildings with a combined space of at least 7,500 square feet
6 connected by a boardwalk and separated by a patio with an
7 entertainment stage.

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

14 "(i) "Community development district" also means a
15 commercial district which borders on a lake which is formed by
16 an impounded reservoir of a river whose source is in a federal
17 wilderness area and has a marina with not less than 30 boat
18 slips and a restaurant with seating capacity of not less than
19 100 seats of which not less than 50 seats must be inside
20 seating and is located on property where the marina and
21 restaurant are under common ownership. In addition to any
22 other requirements by law, the restaurant shall obtain a
23 business license from the local governing body having primary
24 jurisdiction of the property where the restaurant is located
25 and shall be subject to additional regulation as determined
26 necessary by the local governing body. Only one restaurant
27 license per community development district shall be allowed.

1 "(j) "Community development district" also means a
2 parcel of real property that meets all of the following
3 criteria:

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

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

6 "(3) It is located partially in a dry county and
7 partially in a wet county.

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

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

13 "(1) Consists of at least 1,600 acres.

14 "(2) Holds concerts and other family-oriented
15 events.

16 "(3) Is located in a dry county with at least one
17 wet municipality.

18 "(l) "Community development district" also means a
19 commercial district located in a wet county that does not
20 authorize Sunday sales which district is composed of resort
21 property consisting of 3,000 or more contiguous acres under
22 common ownership, has a public golf course with a practice
23 area and clubhouse, has a restaurant on the property, has
24 overnight accommodations consisting of 40 or more guest
25 suites, and has a shooting range.

26 "(m) "Community development district" also means a
27 parcel of land in a resort area consisting of a lodge for

1 overnight accommodations and homesites that include vacation
2 rentals and meets all of the following:

3 "(1) The development was originally developed by
4 entities owned by the same family.

5 "(2) It consists of not less than 180 acres located
6 in a dry county which borders an adjoining state and has an
7 elevation of not less than 1,100 feet.

8 "(3) It has a lodge providing overnight
9 accommodations, including a dining facility with a seating
10 capacity of not less than 50 which is open to the public.

11 "(4) It contains a platted subdivision of not less
12 than 90 homesites, including homes available for vacation
13 rental with plans for additional development.

14 "(5) It is located on a bluff over the backwaters of
15 a major river that flows through an adjoining state and flows
16 through or borders on another adjoining state.

17 "(n) "Community development district" also means a
18 commercial district located in a wet county that does not
19 authorize Sunday sales, has a restaurant with a seating
20 capacity of at least 96 seats inside and 24 seats outside, is
21 located on a lake and adjacent to docking facilities and boat
22 slips for at least 24 boats, is licensed only to sell beer and
23 wine, and is located on property where the restaurant and boat
24 slips and docking facilities are under common ownership.

25 "(o) "Community development district" also means
26 privately owned property that meets all of the following
27 criteria:

1 "(1) It is used for social purposes.

2 "(2) It is located in a dry county that has one or
3 more wet municipalities, but outside the corporate limits of
4 any municipality.

5 "(3) It has a marina and a boat storage facility
6 with at least 150 spaces.

7 "(4) It has a shipstore with at least 2,200 square
8 feet.

9 "(5) It is adjacent to a lake of at least 100,000
10 acres.

11 "(6) It has a restaurant or eatery used for the
12 purpose of preparing and serving meals, with a seating
13 capacity of at least 40 patrons.

14 "(p) "Community development district" also means an
15 area owned by an industrial development board located in a dry
16 county with a wet municipality, but in a municipality which
17 has more than 750 persons, according to the 2010 federal
18 decennial census, and the property meets all of the following:

19 "(1) The property is in a county bordering on two
20 other states.

21 "(2) The property is on a bluff overlooking a river
22 flowing through two adjoining states.

23 "(3) The property would be used only for a hotel
24 having not less than 50 rooms and a restaurant.

25 "~~(p)~~ (q) If a community development district is
26 located in any county, including within any wet or dry
27 municipality located within the county, the county shall

1 participate in the distribution of taxes and license fees
2 pursuant to Chapters 3 and 3A of Title 28.

3 "~~(q)~~ (r) Any alcohol revenues received by a county
4 under Act 2007-417 shall offset in an equal amount any T.V.A.
5 in-lieu-of-taxes payments received by the county. Any T.V.A.
6 in-lieu-of-taxes payments replaced by alcohol revenues under
7 this subsection shall be distributed to T.V.A.-served
8 counties.

9 "~~(r)~~ (s) If a community development district
10 established prior to June 1, 2014, becomes a new municipality
11 pursuant to Sections 11-41-1 and 11-41-2, the section
12 requiring a vote of the residents of the property described in
13 the petition, the new municipality created thereby shall be
14 wet and the sale and distribution of alcoholic beverages
15 therein shall be authorized to the full extent of any other
16 wet municipality. In addition to the other requirements for
17 incorporating into a municipality set forth in Sections
18 11-41-1 and 11-41-2, the petition shall provide notice to
19 potential voters that if the new municipality is incorporated
20 it shall be wet.

21 "§35-8B-2.

22 "The exclusive and uniform method for the
23 establishment of a community development district shall be by
24 the filing of the articles of establishment of a community
25 development district with the judge of probate of the county
26 in which the district is to be located, or if located in more

1 than one county, of the county wherein is located the largest
2 area of the community development district.

3 "(1) The articles of establishment of a district
4 defined in subsection (a) of Section 35-8B-1 shall contain the
5 following:

6 "a. The written consent to the establishment of the
7 district by the owner or owners of at least 51 percent of the
8 real property to be included in the district, or documentation
9 demonstrating that the petitioner has control by deed, trust
10 agreement, contract, or option of at least 51 percent of the
11 real property to be included in the district.

12 "b. A metes and bounds description of the external
13 boundaries of the district, with a specific metes and bounds
14 description of any real property within the external
15 boundaries of the district which is to be excluded from the
16 district.

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

1 "d. The proposed name of the district, and the
2 location and the mailing address of the principal office of
3 the district.

4 "e. A designation of five persons to be the initial
5 members of the board of control of the district, two of whom
6 shall serve in that office until replaced by elected members;
7 provided, the two elected members of the board of control
8 shall be elected by the members of the club who may vote in
9 person or by proxy in writing at an annual meeting of the
10 district, which date shall be specified in the petition. Each
11 club member shall be entitled to cast one vote. The two
12 candidates receiving the highest number of votes shall be
13 elected to the board of control for a period of one year, or
14 until his or her successor shall be duly elected. Upon the
15 death or resignation of a non-elected member of the board of
16 control, the remaining board members shall elect, by majority
17 vote at a called board meeting, a new non-elected board
18 member.

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

22 "a. The written consent to the establishment of the
23 district by the owner of the real property to be included in
24 the district.

25 "b. A metes and bounds description of the external
26 boundaries of the district.

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

4 "d. The proposed name of the district and the
5 location and the mailing address of the principal office of
6 the district.

7 "e. A designation of members of the board of
8 governors of the club operating in the district who shall be
9 the members of the board of control of the district.

10 " (3) The articles of establishment of a district
11 described in Section 35-8B-1(e), (f), (g), (h), (i), (j), (k),
12 (l), (m), (n), ~~or~~ (o), or (p) shall contain the following:

13 "a. The written consent to the establishment of the
14 district by the owner of the real property to be included
15 within the district.

16 "b. A metes and bounds description of the external
17 boundaries of the district.

18 "c. A schematic layout of the proposed district with
19 a map of the buildings and grounds to be used in common by
20 guests in the district.

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 members of the board of
25 governors of the district who shall be elected by the owner of
26 the real property included in the district.

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

4 "a. Endorse on the articles and on each of such
5 copies the word "Filed," and the hour, day, month, and year of
6 the filing thereof.

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

9 "c. Issue a certificate of establishment to which he
10 or she shall affix one certified copy of the articles of
11 establishment, and return such certificate with a certified
12 copy of the articles of establishment affixed thereto to the
13 district.

14 "(5) Upon the filing of the articles of
15 establishment of the community development district with the
16 probate judge, the district's existence shall begin.

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

1 probate judge. On or before the anniversary date of the filing
2 of the articles of establishment, excluding the actual year of
3 filing, the board of control shall pay to the probate judge a
4 fee of three hundred fifty dollars (\$350) and a fee of one
5 thousand dollars (\$1,000) payable to the municipality in which
6 is located the largest area of the community development
7 district if located in a municipality, and if not, to the
8 county in which is located the largest area of the community
9 development district for the purpose of providing additional
10 funds for the office of the probate judge.

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

20 "§35-8B-3.

21 "(a) If a majority of the board of control of a
22 community development district formed under Section
23 35-8B-1(a), (b), or (d) consents to and approves the sale and
24 distribution of alcoholic beverages within the district, it
25 shall be lawful to sell and distribute alcoholic beverages in
26 the community development district in the following manner and
27 subject to the following terms, definitions, and conditions:

1 "(1) Upon being licensed by the Alabama Alcoholic
2 Beverage Control Board, alcoholic beverages may be sold by the
3 club of the district to members and their guests for
4 on-premises consumption only. The club shall be licensed to
5 sell alcoholic beverages to its members and their guests as a
6 club liquor retail licensee by the Alabama Alcoholic Beverage
7 Control Board, upon the club's compliance with the provisions
8 of the alcoholic beverage licensing code and the regulations
9 made thereunder. The original application shall be accompanied
10 by a certificate from the board of control of the district in
11 which the licensed club is located, consenting to and
12 approving the sale of alcoholic beverages at the club. The
13 club shall not be required to present its application or
14 obtain the consent and approval of any authority other than
15 the board of control of the district.

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

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

23 "(b) If a majority of the board of control of a
24 community development district formed pursuant to Section
25 35-8B-1(e), (f), (g), (h), (i), (j), (k), (l), (m), ~~or~~ (n), or
26 (p) consents to and approves the sale and distribution of
27 alcoholic beverages within the district for seven days a week,

1 any person within the district licensed by the Alabama
2 Alcoholic Beverage Control Board may sell alcoholic beverages
3 in the district for on-premises consumption.

4 "(c) If a majority of the board of a community
5 development district formed pursuant to Section 35-8B-1(h)
6 consents to and approves the sale of alcoholic beverages
7 within the district for seven days a week, any person within
8 the district with the appropriate license from the Alabama
9 Alcoholic Beverage Control Board may sell alcoholic beverages
10 in the district for on-premises or off-premises consumption,
11 subject to approval by a referendum as provided herein.

12 "(1) If the community development district is
13 situated entirely within the corporate limits of a
14 municipality, then upon a petition by the board of the
15 district being filed with the city or town clerk or governing
16 body of the municipality, the governing body must call a
17 municipal referendum election on the question of whether to
18 authorize the sale of alcoholic beverages in the district as
19 provided in the petition. The municipal election shall be held
20 at the time of the primary, general, county-wide, or municipal
21 election next succeeding the date of the filing of the
22 petition but not less than 82 days from the date of the filing
23 of the petition. The cost of the municipal election, including
24 the cost of notice by publication, shall be paid out of the
25 general fund of the municipality.

26 "(2) If the community development district is not
27 situated entirely within the corporate limits of a

1 municipality, then upon a petition by the board of the
2 district being filed with the probate judge of the county, the
3 probate judge must call a county-wide referendum election on
4 the question of whether to authorize the sale of alcoholic
5 beverages in the district as provided in the petition. The
6 county-wide election shall be held at the time of the
7 regularly scheduled primary or general election next
8 succeeding the date of the filing of the petition but not less
9 than 82 days from the date of the filing of the petition. The
10 cost of the election, including the cost of notice by
11 publication, shall be paid out of the general funds of the
12 county.

13 "(3) Notice of any referendum election called
14 pursuant to the provisions hereof shall be given by the city
15 or town clerk for municipal elections, or by the probate judge
16 for county-wide elections, by publication at least three weeks
17 before the date of the election, in a newspaper in the
18 municipality or county, as appropriate, or, if there be none,
19 by posting such notice at the town or city hall or county
20 courthouse, as appropriate, apprising the voters of the
21 municipality or county that an election will be held to
22 determine whether alcoholic beverages may be sold within the
23 district as provided in the petition.

24 "(4) If a majority of the electors voting in a
25 referendum called pursuant hereto votes "yes" in favor of the
26 question, then the sale of alcoholic beverages in the district
27 as provided in the petition shall be authorized. If a majority

1 of the electors votes "no," then the sale of alcoholic
2 beverages in the district shall be authorized only as provided
3 by the laws in effect for the district prior to the filing of
4 the petition, and the board of the community development
5 district shall not file another petition under this subsection
6 within 12 months of the referendum election.

7 "(d) In addition to the limitations specified in
8 Section 35-8B-3, with regard to a community development
9 district defined in subsections (a) and (b) of this section,
10 alcoholic beverages shall be sold only for on-premises
11 consumption, as defined in Section 35-8B-3 (3), and in regard
12 to a community development district defined in subsection (b),
13 alcoholic beverages shall not be sold within 3,000 feet of the
14 south right-of-way of any state or federal highway adjacent to
15 any such district."

16 Section 2. This act shall become effective
17 immediately following its passage and approval by the
18 Governor, or its otherwise becoming law.