

1 HB578
2 139077-2
3 By Representative Tuggle
4 RFD: Economic Development and Tourism
5 First Read: 20-MAR-12

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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 which meets
16 certain conditions in a wet county which does not
17 authorize Sunday sales of alcoholic beverages. Upon
18 incorporation and approval of the board, the
19 on-premises Sunday sale of alcoholic beverages
20 would be authorized in the district.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

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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 (3), and in regard
23 to a community development district defined in subsection (b),
24 alcoholic beverages shall not be sold within 3,000 feet of the
25 south right-of-way of any state or federal highway adjacent to
26 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 ~~"(e)~~ (f) If a community development district is
23 located in any county, including within any wet or dry
24 municipality located within the county, the county shall
25 participate in the distribution of taxes and license fees
26 pursuant to Chapters 3 and 3A of Title 28.

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

7 "§35-8B-2.

8 "The exclusive and uniform method for the
9 establishment of a community development district shall be by
10 the filing of the articles of establishment of a community
11 development district with the judge of probate of the county
12 in which the district is to be located, or if located in more
13 than one county, of the county wherein is located the largest
14 area of the community development district.

15 "(1) The articles of establishment of a district
16 defined in subsection (a) of Section 35-8B-1 shall contain the
17 following:

18 "a. The written consent to the establishment of the
19 district by the owner or owners of at least 51 percent of the
20 real property to be included in the district, or documentation
21 demonstrating that the petitioner has control by deed, trust
22 agreement, contract, or option of at least 51 percent of the
23 real property to be included in the district.

24 "b. A metes and bounds description of the external
25 boundaries of the district, with a specific metes and bounds
26 description of any real property within the external

1 boundaries of the district which is to be excluded from the
2 district.

3 "c. A schematic layout of the proposed district with
4 a map of the proposed and existing residential subdivisions,
5 streets, and roads in the district, and of the building and
6 grounds to be used in common by members of the club operating
7 in the district, together with a commitment that the owner or
8 owners of the real property located within the district will
9 bear the costs of the construction of such proposed streets
10 and roads, if such proposed roads and streets do not exist on
11 the day the articles of establishment are filed.

12 "d. The proposed name of the district, and the
13 location and the mailing address of the principal office of
14 the district.

15 "e. A designation of five persons to be the initial
16 members of the Board of Control of the district, two of whom
17 shall serve in that office until replaced by elected members;
18 provided, the two elected members of the Board of Control
19 shall be elected by the members of the club who may vote in
20 person or by proxy in writing at an annual meeting of the
21 district, which date shall be specified in the petition. Each
22 club member shall be entitled to cast one vote. The two
23 candidates receiving the highest number of votes shall be
24 elected to the Board of Control for a period of one year, or
25 until his or her successor shall be duly elected. Upon the
26 death or resignation of a non-elected member of the Board of
27 Control, the remaining board members shall elect, by majority

1 vote at a called board meeting, a new non-elected board
2 member.

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

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

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

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

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

17 "e. A designation of members of the board of
18 governors of the club operating in the district who shall be
19 the members of the Board of Control of the district.

20 "(3) The articles of establishment of a district
21 described in Section 35-8B-1(e) shall 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
24 within 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
3 quests 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 district who shall be elected by the owner of
9 the real property included in the district.

10 ~~"(3)~~ (4) The articles of establishment and two
11 copies thereof shall be delivered to the probate judge who
12 shall, upon the payment of the fees hereinafter prescribed:

13 "a. Endorse on the articles and on each of such
14 copies the word "Filed," and the hour, day, month, and year of
15 the filing thereof.

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

18 "c. Issue a certificate of establishment to which he
19 or she shall affix one certified copy of the articles of
20 establishment, and return such certificate with a certified
21 copy of the articles of establishment affixed thereto to the
22 district.

23 ~~"(4)~~ (5) Upon the filing of the articles of
24 establishment of the community development district with the
25 probate judge, the district's existence shall begin.

26 ~~"(5)~~ (6) In lieu of all other charges and fees for a
27 community development district formed under Section

1 35-8B-1(a), (b), or (d), the probate judge shall charge and
2 collect for filing the articles of establishment and issuing a
3 certificate of establishment, one thousand dollars (\$1,000)
4 payable to the municipality in which is located the largest
5 area of the community development district if located in a
6 municipality, and if not, to the county in which is located
7 the largest area of the community development district and
8 three hundred fifty dollars (\$350) to the county for the
9 purpose of providing additional funds for the office of the
10 probate judge. On or before the anniversary date of the filing
11 of the articles of establishment, excluding the actual year of
12 filing, the Board of Control shall pay to the probate judge a
13 fee of three hundred fifty dollars (\$350) and a fee of one
14 thousand dollars (\$1,000) payable to the municipality in which
15 is located the largest area of the community development
16 district if located in a municipality, and if not, to the
17 county in which is located the largest area of the community
18 development district for the purpose of providing additional
19 funds for the office of the probate judge.

20 "(7) In lieu of all other charges and fees for a
21 community development district formed under Section
22 35-8B-1(e), the judge of probate shall charge and collect a
23 one-time fee for filing the articles of establishment and
24 issuing a certificate of establishment of five hundred dollars
25 (\$500) payable to the county in which is located the largest
26 area of the district for the purpose of providing additional
27 funds to the judge of probate.

1 "§35-8B-3.

2 "(a) If a majority of the Board of Control of a
3 community development district ~~shall consent to and approve~~
4 formed under Section 35-8B-1(a), (b), or (d) consents to and
5 approves the sale and distribution of alcoholic beverages
6 within ~~said~~ the district, it shall be lawful to sell and
7 distribute alcoholic beverages in the community development
8 district in the following manner and subject to the following
9 terms, definitions, and conditions:

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

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

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

6 "(b) If a majority of the board of control of a
7 community development district formed pursuant to Section
8 35-8B-1(e) consents to and approves the sale and distribution
9 of alcoholic beverages within the district on Sundays, any
10 person within the district licensed by the Alabama Alcoholic
11 Beverage Control Board may sell alcoholic beverages in the
12 district for on-premises consumption."

13 Section 2. This act shall become effective
14 immediately following its passage and approval by the
15 Governor, or its otherwise becoming law.