

1 HB733  
2 138389-2  
3 By Representatives Baker, Mask, Harper, Jackson, Shiver  
4 and Jones  
5 RFD: Economic Development and Tourism  
6 First Read: 19-APR-12

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8 SYNOPSIS: Under existing law, a commercial development  
9 authority may incorporate in any municipality in  
10 the state for the purpose of acquiring, owning, or  
11 leasing projects that develop and promote  
12 commercial enterprises in the municipality.

13 This bill would define person for purposes  
14 of forming a commercial development authority to  
15 include a limited liability company or a  
16 partnership. This bill would remove the requirement  
17 that the authority be formed by not less than three  
18 natural persons. This bill would also remove the  
19 requirement that an incorporator of a commercial  
20 development authority be a qualified elector of the  
21 municipality where the authority is being formed.

22  
23 A BILL  
24 TO BE ENTITLED  
25 AN ACT  
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1           Relating to commercial development authorities; to  
2 amend Sections 11-54-171, 11-54-173, 11-54-174, 11-54-178, and  
3 11-54-190, Code of Alabama 1975; to provide further for the  
4 formation of a commercial development authority; and to remove  
5 the requirement that an incorporator be a qualified elector of  
6 the municipality where the authority is being formed.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8           Section 1. Sections 11-54-171, 11-54-173, 11-54-174,  
9 11-54-178, and 11-54-190, Code of Alabama 1975, are amended to  
10 read as follows:

11           "§11-54-171.

12           "The following words and phrases used in this  
13 article shall, in the absence of clear implication otherwise,  
14 be given the following interpretations:

15           "(1) APPLICANT. A ~~natural~~ person who files a written  
16 application with the governing body of any municipality in  
17 accordance with Section 11-54-173.

18           "(2) AUTHORITY. A public corporation organized  
19 pursuant to this article.

20           "(3) AUTHORIZING MUNICIPALITY. Any municipality the  
21 governing body of which shall have adopted an authorizing  
22 resolution.

23           "(4) AUTHORIZING RESOLUTION. A resolution adopted by  
24 the governing body of any municipality in accordance with  
25 Section 11-54-173, that authorizes the incorporation of an  
26 authority.

27           "(5) BOARD. The board of directors of an authority.

1           "(6) BONDS. Includes bonds, notes, and certificates  
2 representing an obligation to pay money.

3           "(7) COUNTY. Any county in the state.

4           "(8) DIRECTOR. A member of the board of an  
5 authority.

6           "(9) GOVERNING BODY. With respect to a municipality,  
7 its city or town council, board of commissioners, or other  
8 like governing body.

9           "(10) INCORPORATORS. The persons forming a public  
10 corporation organized pursuant to this article.

11           "(11) MUNICIPALITY. Any incorporated city or town of  
12 the state.

13           "(12) PERSON. Unless limited to a natural person by  
14 the context in which it is used, includes a public or private  
15 corporation, limited liability company or partnership, a  
16 municipality, ~~a~~ or county, or an agency, department, or  
17 instrumentality of the state, ~~or~~ or of a county or municipality.

18           "(13) PRINCIPAL OFFICE. The place at which the  
19 certificate of incorporation and amendments thereto, the  
20 bylaws, and the minutes of the proceedings of the board of an  
21 authority are kept.

22           "(14) POLLUTION. Any of the following:

23           "a. The placing, whether by emission, discharge,  
24 leakage, or other means, of any noxious or deleterious noise  
25 or substance into any air or water of, in, or adjacent to the  
26 State of Alabama.

27           "b. The contaminating of air and water.

1            "c. The affecting of any air or water so as to  
2        render or be likely to render the air or water, or the use of  
3        either for domestic, industrial, agricultural, or recreational  
4        purposes, hazardous, inimical, or harmful to the health,  
5        safety, or welfare of human beings, animals, birds, aquatic  
6        creatures, or any of them, or to the existence or growth of  
7        vegetation.

8            "(15) POLLUTION CONTROL FACILITY. Any land,  
9        building, structure, machinery, or equipment having to do with  
10       or designed for or the end purpose of which is the control,  
11       reduction, abatement, or prevention of air, noise, water, or  
12       general environmental pollution, including, but not limited to  
13       the following: Any air pollution control facility, noise  
14       abatement, or reduction facility, water management facility,  
15       water purification facility, waste water collecting system,  
16       waste water treatment works, or solid waste disposal facility.

17           " (16) PROJECT.

18           "a. Any land and any building or other improvement  
19        thereon and all real and personal properties deemed necessary  
20        in connection therewith, whether or not now in existence,  
21        which shall be suitable for use by the following or by any  
22        combination of two or more of the following:

23           "1. Any commercial enterprise engaged in the  
24        manufacturing, processing, assembling, storing, warehousing,  
25        distributing, or selling of any products of agriculture,  
26        mining, or industry.

1                   "2. Any enterprise for the purpose of research in  
2 connection with:

3                   "(i) Any of the foregoing.

4                   "(ii) The development of new products or new  
5 processes.

6                   "(iii) The improvement of existing products or known  
7 processes.

8                   "(iv) The development of facilities for the  
9 exploration of outer space or promotion of the national  
10 defense.

11                  "3. Any commercial enterprise engaged in selling,  
12 servicing, providing, or handling any policies of insurance or  
13 any financial services.

14                  "b. Any land and any building or other improvement  
15 thereon and all real and personal property deemed necessary in  
16 connection therewith, whether or not now in existence, which  
17 shall be suitable for use as all or any part of the following:

18                  "1. A ship canal, port or port facility, off-street  
19 parking facility, dock or dock facility, harbor facility,  
20 railroad, monorail or tramway, railway terminal or railway  
21 belt line and switch.

22                  "2. An office building or buildings.

23                  "3. A planetarium or museum.

24                  "4. A pollution control facility.

25                  "5. A hotel, including parking facilities,  
26 facilities for meetings, and facilities suitable for rental to

1 persons engaged in any business, trade, profession,  
2 occupation, or activity.

3 "6. A shopping center or similar facility suitable  
4 for use by two or more commercial enterprises engaged in any  
5 business, trade, profession, occupation, or activity,  
6 provided, that a project shall not include facilities, other  
7 than office buildings or other buildings suitable for use as  
8 corporate headquarters, designed for the sale or distribution  
9 to the public of electricity, gas, water, or telephone, or  
10 other services commonly classified as public utilities.

11 "(17) STATE. The State of Alabama.

12 "§11-54-173.

13 "(a) A public corporation may be organized pursuant  
14 to the provisions of this article in any municipality. In  
15 order to incorporate such a public corporation, any number of  
16 ~~natural persons, not less than three, who are duly qualified~~  
17 ~~electors of the municipality,~~ shall first file a written  
18 application with the governing body of such municipality,  
19 which application shall:

20 "(1) Contain a statement that the applicants propose  
21 to incorporate an authority pursuant to the provisions of this  
22 article;

23 "(2) State the proposed location of the principal  
24 office of the authority, which shall be within the corporate  
25 limits of the municipality with whose governing body such  
26 application is filed; and

1           ~~"(3) State that each of the applicants is a duly~~  
2 ~~qualified elector of the municipality with whose governing~~  
3 ~~body such application is filed; and~~

4           "(3)~~(4)~~ Request that the governing body of such  
5 municipality adopt a resolution declaring that it is wise,  
6 expedient, and necessary that the proposed authority be formed  
7 and authorizing the applicants to proceed to form the proposed  
8 authority by the filing for record of a certificate of  
9 incorporation in accordance with the provisions of Section  
10 11-54-174.

11           "(b) Every such application shall be accompanied by  
12 such supporting documents or evidence as the applicants may  
13 consider appropriate. As promptly as may be practicable after  
14 the filing of the application with it in accordance with the  
15 provisions of this section, the governing body of the  
16 municipality with which the application was filed shall review  
17 the contents of the application, and shall adopt a resolution  
18 either (i) denying the application or (ii) declaring that it  
19 is wise, expedient, and necessary that the proposed authority  
20 be formed and authorizing the applicants to proceed to form  
21 the proposed authority by the filing for record of a  
22 certificate of incorporation in accordance with the provisions  
23 of Section 11-54-174. The governing body with which the  
24 application is filed shall also cause a copy of the  
25 application to be spread upon or otherwise made a part of the  
26 minutes of the meeting of such governing body at which final  
27 action upon said application is taken.



1                   "§11-54-174.

2                   "Within 40 days following the adoption of an  
3 authorizing resolution the applicants shall proceed to  
4 incorporate an authority by filing for record in the office of  
5 the judge of probate of the county or one of the counties in  
6 which the authorizing municipality is located a certificate of  
7 incorporation which shall comply in form and substance with  
8 the requirements of this section and which shall be in the  
9 form and executed in the manner herein provided.

10                   "The certificate of incorporation of the authority  
11 shall state:

12                   "(1) The names of the persons forming the authority,  
13 ~~and that each of them is a duly qualified elector of the~~  
14 ~~authorizing municipality;~~

15                   "(2) The name of the authority (which shall be "The  
16 Commercial Development Authority of the City of \_\_\_\_\_," with  
17 the insertion of the name of the authorizing municipality,  
18 unless the Secretary of State shall determine that such name  
19 is identical to the name of any other corporation organized  
20 under the laws of the state or so nearly similar thereto as to  
21 lead to confusion and uncertainty, in which case the  
22 incorporators may insert additional identifying words so as to  
23 eliminate said duplication or similarity);

24                   "(3) The period for the duration of the authority  
25 (if the duration is to be perpetual, subject to the provisions  
26 of Section 11-54-189, that fact shall be stated);

1           "(4) The name of the authorizing municipality  
2 together with the date on which the governing body thereof  
3 adopted the authorizing resolution;

4           "(5) The location of the principal office of the  
5 authority, which shall be within the corporate limits of the  
6 authorizing municipality;

7           "(6) That the authority is organized pursuant to the  
8 provisions of this article; and

9           "(7) Any other matters relating to the authority  
10 that the incorporators may choose to insert and that are not  
11 inconsistent with this article or with the laws of the state.

12           "The certificate of incorporation shall be signed  
13 and acknowledged by the incorporators before an officer  
14 authorized by the laws of the state to take acknowledgments to  
15 deeds. When the certificate of incorporation is filed for  
16 record, there shall be attached to it (i) a copy of the  
17 application as filed with the governing body of the  
18 authorizing municipality in accordance with the provisions of  
19 Section 11-54-173, (ii) a certified copy of the authorizing  
20 resolution adopted by the governing body of the authorizing  
21 municipality, and (iii) a certificate by the Secretary of  
22 State that the name proposed for the authority is not  
23 identical to that of any other corporation organized under the  
24 laws of the state or so nearly similar thereto as to lead to  
25 confusion and uncertainty. Upon the filing for record of the  
26 said certificate of incorporation and the documents required  
27 by the preceding sentence to be attached thereto, the

1 authority shall come into existence and shall constitute a  
2 public corporation under the name set forth in said  
3 certificate of incorporation. The judge of probate shall  
4 thereupon send a notice to the Secretary of State that the  
5 certificate of incorporation of the authority has been filed  
6 for record.

7 "§11-54-178.

8 "(a) An authority shall have the following powers,  
9 together with all powers incidental thereto or necessary to  
10 the discharge thereof in corporate form:

11 "(1) To have succession by its corporate name for  
12 the duration of time (which may be perpetuity, subject to the  
13 provisions of Section 11-54-189) specified in its certificate  
14 of incorporation;

15 "(2) To sue and be sued in its own name and to  
16 prosecute and defend civil actions in any court having  
17 jurisdiction of the subject matter and of the parties;

18 "(3) To adopt and make use of a corporate seal and  
19 to alter the same at pleasure;

20 "(4) To adopt and alter bylaws for the regulation  
21 and conduct of its affairs and business;

22 "(5) To acquire, whether by purchase, construction,  
23 exchange, gift, lease, or otherwise and to refinance existing  
24 indebtedness on, improve, maintain, equip, and furnish one or  
25 more projects, including all real and personal properties  
26 which the board of the authority may deem necessary in

1 connection therewith, regardless of whether or not any such  
2 projects shall then be in existence;

3 "(6) To lease to others any or all of its projects  
4 and to charge and collect rent therefor, and to terminate any  
5 such lease upon the failure of the lessee to comply with any  
6 of the obligations thereof;

7 "(7) To sell, purchase, exchange, donate, or convey  
8 and to grant options to any lessee to acquire any of its  
9 projects and any or all of its properties whenever its board  
10 shall find any such action to be in furtherance of the  
11 purposes for which the authority was organized;

12 "(8) To issue its bonds for the purpose of carrying  
13 out any of its powers;

14 "(9) To mortgage and pledge any or all of its  
15 projects or any part or parts thereof, as security for the  
16 payment of the principal of and interest on any bonds so  
17 issued and any agreements made in connection therewith,  
18 whether then owned or thereafter acquired, and to pledge the  
19 revenues and receipts therefrom or from any thereof;

20 "(10) To execute and deliver, in accordance with the  
21 provisions of this section and Section 11-54-179, mortgages  
22 and deeds of trust and trust indentures, or either;

23 "(11) To appoint, employ, contract with, and provide  
24 for the compensation of, such officers, employees, and agents,  
25 including but without limitation to engineers, attorneys,  
26 management consultants, and fiscal advisers, as the board

1 shall deem necessary for the conduct of the business of the  
2 authority;

3 "(12) To provide for such insurance as the board may  
4 deem advisable;

5 "(13) To make, enter into, and execute such  
6 contracts, agreements, leases, and other instruments and to  
7 take such other actions as may be necessary or convenient to  
8 accomplish any purpose for which the authority was organized  
9 or to exercise any power expressly granted hereunder;

10 "(14) To require payments in lieu of taxes to be  
11 made by the lessee of the project to either the authority or  
12 the municipality.

13 "(b) All projects of an authority shall be located  
14 wholly or partly within the corporate limits of its  
15 authorizing municipality and (1) shall be wholly within areas  
16 for which either a redevelopment plan has been prepared and  
17 approved pursuant to the provisions of Section 24-2-4, as said  
18 section may at any time exist, or an urban renewal plan has  
19 been prepared and approved pursuant to the provisions of  
20 Section 24-3-3 as said section may at any time exist, or (2)  
21 shall include as a part of the project facilities with respect  
22 to which an urban development action grant has been made under  
23 Section 119 of the Housing and Community Development Act of  
24 1974, as said section may at any time exist.

25 "(c) All meetings of the board of an authority for  
26 any purpose shall be open to the public.

27 "§11-54-190.

1           "The existence of an authority incorporated under  
2 the provisions of this article shall prevent the subsequent  
3 incorporation hereunder of another authority pursuant to  
4 authority granted by the same municipality. Notwithstanding  
5 this section, an authority whose membership solely includes  
6 county or municipal governments, county or municipal boards of  
7 education, or any of their respective boards, agencies,  
8 departments, corporations, or instrumentalities, including  
9 other commercial development authorities, may be incorporated  
10 at any time, regardless of whether another authority exists  
11 within the jurisdiction at issue."

12           Section 2. This act shall become effective on the  
13 first day of the third month following its passage and  
14 approval by the Governor, or its otherwise becoming law.