

1 SB436
2 139077-2
3 By Senators Whatley, Marsh and Blackwell
4 RFD: Governmental Affairs
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
25

1 To amend Sections 35-8B-1, 35-8B-2, and 35-8B-3,
2 Code of Alabama 1975, relating to community development
3 districts; to create an additional class of community
4 development district; and to provide for the incorporation and
5 powers of the district.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

9 "§35-8B-1.

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

1 club, including the management of the premises where food and
2 drink are sold.

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

22 "(c) In addition to the limitations specified in
23 Section 35-8B-3, with regard to a community development
24 district defined in subsections (a) and (b) of this section,
25 alcoholic beverages shall be sold only for on-premises
26 consumption, as defined in Section 35-8B-3 (3), and in regard

1 to a community development district defined in subsection (b),
2 alcoholic beverages shall not be sold within 3,000 feet of the
3 south right-of-way of any state or federal highway adjacent to
4 any such district.

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

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

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

1 "~~(e)~~ (f) If a community development district is
2 located in any county, including within any wet or dry
3 municipality located within the county, the county shall
4 participate in the distribution of taxes and license fees
5 pursuant to Chapters 3 and 3A of Title 28.

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

12 "§35-8B-2.

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

20 "(1) The articles of establishment of a district
21 defined in subsection (a) of Section 35-8B-1 shall contain the
22 following:

23 "a. The written consent to the establishment of the
24 district by the owner or owners of at least 51 percent of the
25 real property to be included in the district, or documentation
26 demonstrating that the petitioner has control by deed, trust

1 agreement, contract, or option of at least 51 percent of the
2 real property to be included in the district.

3 "b. A metes and bounds description of the external
4 boundaries of the district, with a specific metes and bounds
5 description of any real property within the external
6 boundaries of the district which is to be excluded from the
7 district.

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

17 "d. The proposed name of the district, and the
18 location and the mailing address of the principal office of
19 the district.

20 "e. A designation of five persons to be the initial
21 members of the Board of Control of the district, two of whom
22 shall serve in that office until replaced by elected members;
23 provided, the two elected members of the Board of Control
24 shall be elected by the members of the club who may vote in
25 person or by proxy in writing at an annual meeting of the
26 district, which date shall be specified in the petition. Each

1 club member shall be entitled to cast one vote. The two
2 candidates receiving the highest number of votes shall be
3 elected to the Board of Control for a period of one year, or
4 until his or her successor shall be duly elected. Upon the
5 death or resignation of a non-elected member of the Board of
6 Control, the remaining board members shall elect, by majority
7 vote at a called board meeting, a new non-elected board
8 member.

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

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

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

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

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

23 "e. A designation of members of the board of
24 governors of the club operating in the district who shall be
25 the members of the Board of Control of the district.

1 "(3) The articles of establishment of a district
2 described in Section 35-8B-1(e) shall contain the following:

3 "a. The written consent to the establishment of the
4 district by the owner of the real property to be included
5 within the district.

6 "b. A metes and bounds description of the external
7 boundaries of the district.

8 "c. A schematic layout of the proposed district with
9 a map of the buildings and grounds to be used in common by
10 guests in the district.

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

14 "e. A designation of members of the board of
15 governors of the district who shall be elected by the owner of
16 the real property included in the district.

17 ~~"(3)~~ (4) The articles of establishment and two
18 copies thereof shall be delivered to the probate judge who
19 shall, upon the payment of the fees hereinafter prescribed:

20 "a. Endorse on the articles and on each of such
21 copies the word "Filed," and the hour, day, month, and year of
22 the filing thereof.

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

25 "c. Issue a certificate of establishment to which he
26 or she shall affix one certified copy of the articles of

1 establishment, and return such certificate with a certified
2 copy of the articles of establishment affixed thereto to the
3 district.

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

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

1 development district for the purpose of providing additional
2 funds for the office of the probate judge.

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

11 "§35-8B-3.

12 "(a) If a majority of the Board of Control of a
13 community development district ~~shall consent to and approve~~
14 formed under Section 35-8B-1(a), (b), or (d) consents to and
15 approves the sale and distribution of alcoholic beverages
16 within ~~said~~ the district, it shall be lawful to sell and
17 distribute alcoholic beverages in the community development
18 district in the following manner and subject to the following
19 terms, definitions, and conditions:

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

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

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

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

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

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