

1 SB501
2 138389-2
3 By Senators Keahey, Marsh, Beasley, Bedford, Irons, Fielding,
4 Ross and Ward
5 RFD: Governmental Affairs
6 First Read: 10-APR-12

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

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

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT

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Relating to commercial development authorities; to amend Sections 11-54-171, 11-54-173, 11-54-174, 11-54-178, and 11-54-190, Code of Alabama 1975; to provide further for the formation of a commercial development authority; and to remove the requirement that an incorporator be a qualified elector of the municipality where the authority is being formed.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§11-54-171.

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

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

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

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

"(4) AUTHORIZING RESOLUTION. A resolution adopted by the governing body of any municipality in accordance with

1 Section 11-54-173, that authorizes the incorporation of an
2 authority.

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

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

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

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

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

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

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

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

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

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

1 "a. The placing, whether by emission, discharge,
2 leakage, or other means, of any noxious or deleterious noise
3 or substance into any air or water of, in, or adjacent to the
4 State of Alabama.

5 "b. The contaminating of air and water.

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

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

22 "(16) PROJECT.

23 "a. Any land and any building or other improvement
24 thereon and all real and personal properties deemed necessary
25 in connection therewith, whether or not now in existence,

1 which shall be suitable for use by the following or by any
2 combination of two or more of the following:

3 "1. Any commercial enterprise engaged in the
4 manufacturing, processing, assembling, storing, warehousing,
5 distributing, or selling of any products of agriculture,
6 mining, or industry.

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

9 "(i) Any of the foregoing.

10 "(ii) The development of new products or new
11 processes.

12 "(iii) The improvement of existing products or known
13 processes.

14 "(iv) The development of facilities for the
15 exploration of outer space or promotion of the national
16 defense.

17 "3. Any commercial enterprise engaged in selling,
18 servicing, providing, or handling any policies of insurance or
19 any financial services.

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

24 "1. A ship canal, port or port facility, off-street
25 parking facility, dock or dock facility, harbor facility,

1 railroad, monorail or tramway, railway terminal or railway
2 belt line and switch.

3 "2. An office building or buildings.

4 "3. A planetarium or museum.

5 "4. A pollution control facility.

6 "5. A hotel, including parking facilities,
7 facilities for meetings, and facilities suitable for rental to
8 persons engaged in any business, trade, profession,
9 occupation, or activity.

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

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

19 "§11-54-173.

20 "(a) A public corporation may be organized pursuant
21 to the provisions of this article in any municipality. In
22 order to incorporate such a public corporation, any number of
23 ~~natural persons, not less than three, who are duly qualified~~
24 ~~electors of the municipality,~~ shall first file a written
25 application with the governing body of such municipality,
26 which application shall:

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

4 "(2) State the proposed location of the principal
5 office of the authority, which shall be within the corporate
6 limits of the municipality with whose governing body such
7 application is filed; and

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

11 "(3)~~(4)~~ Request that the governing body of such
12 municipality adopt a resolution declaring that it is wise,
13 expedient, and necessary that the proposed authority be formed
14 and authorizing the applicants to proceed to form the proposed
15 authority by the filing for record of a certificate of
16 incorporation in accordance with the provisions of Section
17 11-54-174.

18 "(b) Every such application shall be accompanied by
19 such supporting documents or evidence as the applicants may
20 consider appropriate. As promptly as may be practicable after
21 the filing of the application with it in accordance with the
22 provisions of this section, the governing body of the
23 municipality with which the application was filed shall review
24 the contents of the application, and shall adopt a resolution
25 either (i) denying the application or (ii) declaring that it
26 is wise, expedient, and necessary that the proposed authority

1 be formed and authorizing the applicants to proceed to form
2 the proposed authority by the filing for record of a
3 certificate of incorporation in accordance with the provisions
4 of Section 11-54-174. The governing body with which the
5 application is filed shall also cause a copy of the
6 application to be spread upon or otherwise made a part of the
7 minutes of the meeting of such governing body at which final
8 action upon said application is taken.

9 "§11-54-174.

10 "Within 40 days following the adoption of an
11 authorizing resolution the applicants shall proceed to
12 incorporate an authority by filing for record in the office of
13 the judge of probate of the county or one of the counties in
14 which the authorizing municipality is located a certificate of
15 incorporation which shall comply in form and substance with
16 the requirements of this section and which shall be in the
17 form and executed in the manner herein provided.

18 "The certificate of incorporation of the authority
19 shall state:

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

23 "(2) The name of the authority (which shall be "The
24 Commercial Development Authority of the City of _____," with
25 the insertion of the name of the authorizing municipality,
26 unless the Secretary of State shall determine that such name

1 is identical to the name of any other corporation organized
2 under the laws of the state or so nearly similar thereto as to
3 lead to confusion and uncertainty, in which case the
4 incorporators may insert additional identifying words so as to
5 eliminate said duplication or similarity);

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

9 "(4) The name of the authorizing municipality
10 together with the date on which the governing body thereof
11 adopted the authorizing resolution;

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

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

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

20 "The certificate of incorporation shall be signed
21 and acknowledged by the incorporators before an officer
22 authorized by the laws of the state to take acknowledgments to
23 deeds. When the certificate of incorporation is filed for
24 record, there shall be attached to it (i) a copy of the
25 application as filed with the governing body of the
26 authorizing municipality in accordance with the provisions of

1 Section 11-54-173, (ii) a certified copy of the authorizing
2 resolution adopted by the governing body of the authorizing
3 municipality, and (iii) a certificate by the Secretary of
4 State that the name proposed for the authority is not
5 identical to that of any other corporation organized under the
6 laws of the state or so nearly similar thereto as to lead to
7 confusion and uncertainty. Upon the filing for record of the
8 said certificate of incorporation and the documents required
9 by the preceding sentence to be attached thereto, the
10 authority shall come into existence and shall constitute a
11 public corporation under the name set forth in said
12 certificate of incorporation. The judge of probate shall
13 thereupon send a notice to the Secretary of State that the
14 certificate of incorporation of the authority has been filed
15 for record.

16 "§11-54-178.

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

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

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

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

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

5 "(5) To acquire, whether by purchase, construction,
6 exchange, gift, lease, or otherwise and to refinance existing
7 indebtedness on, improve, maintain, equip, and furnish one or
8 more projects, including all real and personal properties
9 which the board of the authority may deem necessary in
10 connection therewith, regardless of whether or not any such
11 projects shall then be in existence;

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

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

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

23 "(9) To mortgage and pledge any or all of its
24 projects or any part or parts thereof, as security for the
25 payment of the principal of and interest on any bonds so
26 issued and any agreements made in connection therewith,

1 whether then owned or thereafter acquired, and to pledge the
2 revenues and receipts therefrom or from any thereof;

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

6 "(11) To appoint, employ, contract with, and provide
7 for the compensation of, such officers, employees, and agents,
8 including but without limitation to engineers, attorneys,
9 management consultants, and fiscal advisers, as the board
10 shall deem necessary for the conduct of the business of the
11 authority;

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

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

19 "(14) To require payments in lieu of taxes to be
20 made by the lessee of the project to either the authority or
21 the municipality.

22 "(b) All projects of an authority shall be located
23 wholly or partly within the corporate limits of its
24 authorizing municipality and (1) shall be wholly within areas
25 for which either a redevelopment plan has been prepared and
26 approved pursuant to the provisions of Section 24-2-4, as said

1 section may at any time exist, or an urban renewal plan has
2 been prepared and approved pursuant to the provisions of
3 Section 24-3-3 as said section may at any time exist, or (2)
4 shall include as a part of the project facilities with respect
5 to which an urban development action grant has been made under
6 Section 119 of the Housing and Community Development Act of
7 1974, as said section may at any time exist.

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

10 "§11-54-190.

11 "The existence of an authority incorporated under
12 the provisions of this article shall prevent the subsequent
13 incorporation hereunder of another authority pursuant to
14 authority granted by the same municipality. Notwithstanding
15 this section, an authority whose membership solely includes
16 county or municipal governments, county or municipal boards of
17 education, or any of their respective boards, agencies,
18 departments, corporations, or instrumentalities, including
19 other commercial development authorities, may be incorporated
20 at any time, regardless of whether another authority exists
21 within the jurisdiction at issue."

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