

1 SB322
2 183057-2
3 By Senator Waggoner
4 RFD: Tourism and Marketing
5 First Read: 15-MAR-17

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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 would
16 be required to border on a lake which is formed by
17 an impounded reservoir of a river whose source is
18 in a federal wilderness area and to have a marina
19 and restaurant. The restaurant would be subject to
20 additional regulation by the local governing body
21 where located. Upon incorporation and approval of
22 the board, the sale of alcoholic beverages would be
23 authorized in the district.

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25 A BILL
26 TO BE ENTITLED
27 AN ACT

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2 To amend Section 35-8B-1, 35-8B-2, and 35-8B-3, Code
3 of Alabama 1975, as amended by Act 2016-222 of the 2016
4 Regular Session, relating to community development districts;
5 to create an additional class of community development
6 district; and to provide for the incorporation and powers of
7 the district.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Section 35-8B-1, 35-8B-2, and 35-8B-3,
10 Code of Alabama 1975, as amended by Act 2016-222 of the 2016
11 Regular Session, are amended to read as follows:

12 "§35-8B-1.

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

1 full-time management staff for the social activities of the
2 club, including the management of the premises where food and
3 drink are sold.

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

23 "(c) In addition to the limitations specified in
24 Section 35-8B-3, with regard to a community development
25 district defined in subsections (a) and (b) of this section,
26 alcoholic beverages shall be sold only for on-premises
27 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
27 and purchase agreements to require additional membership and

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

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

26 "(f) "Community development district" also means a
27 commercial district located in a wet county that does not

1 authorize Sunday sales, has a restaurant with a seating
2 capacity of at least 120, is adjacent to a marina with at
3 least 34 boat slips, and is located on property where the
4 marina and restaurant are under common ownership.

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

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

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

1 jurisdiction of the property where the restaurant is located
2 and shall be subject to additional regulation as determined
3 necessary by the local governing body. Only one restaurant
4 license per community development district shall be allowed.

5 ~~"(i)~~ (j) If a community development district is
6 located in any county, including within any wet or dry
7 municipality located within the county, the county shall
8 participate in the distribution of taxes and license fees
9 pursuant to Chapters 3 and 3A of Title 28.

10 ~~"(j)~~ (k) Any alcohol revenues received by a county
11 under Act 2007-417 shall offset in an equal amount any T.V.A.
12 in-lieu-of-taxes payments received by the county. Any T.V.A.
13 in-lieu-of-taxes payments replaced by alcohol revenues under
14 this subsection shall be distributed to T.V.A.-served
15 counties.

16 ~~"(k)~~ (l) If a community development district
17 established prior to June 1, 2014, becomes a new municipality
18 pursuant to Sections 11-41-1 and 11-41-2, the section
19 requiring a vote of the residents of the property described in
20 the petition, the new municipality created thereby shall be
21 wet and the sale and distribution of alcoholic beverages
22 therein shall be authorized to the full extent of any other
23 wet municipality. In addition to the other requirements for
24 incorporating into a municipality set forth in Sections
25 11-41-1 and 11-41-2, the petition shall provide notice to
26 potential voters that if the new municipality is incorporated
27 it shall be wet.

1 "§35-8B-2.

2 "The exclusive and uniform method for the
3 establishment of a community development district shall be by
4 the filing of the articles of establishment of a community
5 development district with the judge of probate of the county
6 in which the district is to be located, or if located in more
7 than one county, of the county wherein is located the largest
8 area of the community development district.

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

12 "a. The written consent to the establishment of the
13 district by the owner or owners of at least 51 percent of the
14 real property to be included in the district, or documentation
15 demonstrating that the petitioner has control by deed, trust
16 agreement, contract, or option of at least 51 percent of the
17 real property to be included in the district.

18 "b. A metes and bounds description of the external
19 boundaries of the district, with a specific metes and bounds
20 description of any real property within the external
21 boundaries of the district which is to be excluded from the
22 district.

23 "c. A schematic layout of the proposed district with
24 a map of the proposed and existing residential subdivisions,
25 streets, and roads in the district, and of the building and
26 grounds to be used in common by members of the club operating
27 in the district, together with a commitment that the owner or

1 owners of the real property located within the district will
2 bear the costs of the construction of such proposed streets
3 and roads, if such proposed roads and streets do not exist on
4 the day the articles of establishment are filed.

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

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

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

1 "a. The written consent to the establishment of the
2 district by the owner of the real property to be included in
3 the district.

4 "b. A metes and bounds description of the external
5 boundaries of the district.

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

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

12 "e. A designation of members of the board of
13 governors of the club operating in the district who shall be
14 the members of the board of control of the district.

15 "(3) The articles of establishment of a district
16 described in Section 35-8B-1(e), (f), (g), ~~or~~ (h), or (i)
17 shall contain the following:

18 "a. The written consent to the establishment of the
19 district by the owner of the real property to be included
20 within the district.

21 "b. A metes and bounds description of the external
22 boundaries of the district.

23 "c. A schematic layout of the proposed district with
24 a map of the buildings and grounds to be used in common by
25 guests in the district.

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

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

10 "a. Endorse on the articles and on each of such
11 copies the word "Filed," and the hour, day, month, and year of
12 the filing thereof.

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

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

20 "(5) Upon the filing of the articles of
21 establishment of the community development district with the
22 probate judge, the district's existence shall begin.

23 "(6) In lieu of all other charges and fees for a
24 community development district formed under Section
25 35-8B-1(a), (b), or (d), the probate judge shall charge and
26 collect for filing the articles of establishment and issuing a
27 certificate of establishment, one thousand dollars (\$1,000)

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

17 "(7) In lieu of all other charges and fees for a
18 community development district formed under Section
19 35-8B-1(e), (f), (g), ~~or~~ (h), or (i), the judge of probate
20 shall charge and collect a one-time fee for filing the
21 articles of establishment and issuing a certificate of
22 establishment of five hundred dollars (\$500) payable to the
23 county in which is located the largest area of the district
24 for the purpose of providing additional funds to the judge of
25 probate.

26 "§35-8B-3.

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

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

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

25 "(3) ON-PREMISES CONSUMPTION. Consumption on the
26 property of the club, including the club house, the golf
27 course, and other recreational facilities of the club. Sales

1 of alcoholic beverages for on-premises consumption shall be
2 made only by authorized charge to a member's account.

3 "(b) If a majority of the board of control of a
4 community development district formed pursuant to Section
5 35-8B-1(e), (f), (g), ~~or~~ (h), or (i) consents to and approves
6 the sale and distribution of alcoholic beverages within the
7 district for seven days a week, any person within the district
8 licensed by the Alabama Alcoholic Beverage Control Board may
9 sell alcoholic beverages in the district for on-premises
10 consumption."

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