

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

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ENROLLED, An Act,

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.

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

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

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

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

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

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

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

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

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

23 "(13) PRINCIPAL OFFICE. The place at which the
24 certificate of incorporation and amendments thereto, the

1 bylaws, and the minutes of the proceedings of the board of an
2 authority are kept.

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

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

8 "b. The contaminating of air and water.

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

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

25 "(16) PROJECT.

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

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

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

12 "(i) Any of the foregoing.

13 "(ii) The development of new products or new
14 processes.

15 "(iii) The improvement of existing products or known
16 processes.

17 "(iv) The development of facilities for the
18 exploration of outer space or promotion of the national
19 defense.

20 "3. Any commercial enterprise engaged in selling,
21 servicing, providing, or handling any policies of insurance or
22 any financial services.

23 "b. Any land and any building or other improvement
24 thereon and all real and personal property deemed necessary in

1 connection therewith, whether or not now in existence, which
2 shall be suitable for use as all or any part of the following:

3 "1. A ship canal, port or port facility, off-street
4 parking facility, dock or dock facility, harbor facility,
5 railroad, monorail or tramway, railway terminal or railway
6 belt line and switch.

7 "2. An office building or buildings.

8 "3. A planetarium or museum.

9 "4. A pollution control facility.

10 "5. A hotel, including parking facilities,
11 facilities for meetings, and facilities suitable for rental to
12 persons engaged in any business, trade, profession,
13 occupation, or activity.

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

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

23 "§11-54-173.

24 "(a) A public corporation may be organized pursuant
25 to the provisions of this article in any municipality. In

1 order to incorporate such a public corporation, any number of
2 ~~natural persons, not less than three, who are duly qualified~~
3 ~~electors of the municipality,~~ shall first file a written
4 application with the governing body of such municipality,
5 which application shall:

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

9 "(2) State the proposed location of the principal
10 office of the authority, which shall be within the corporate
11 limits of the municipality with whose governing body such
12 application is filed; and

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

16 "(3) ~~(4)~~ Request that the governing body of such
17 municipality adopt a resolution declaring that it is wise,
18 expedient, and necessary that the proposed authority be formed
19 and authorizing the applicants to proceed to form the proposed
20 authority by the filing for record of a certificate of
21 incorporation in accordance with the provisions of Section
22 11-54-174.

23 "(b) Every such application shall be accompanied by
24 such supporting documents or evidence as the applicants may
25 consider appropriate. As promptly as may be practicable after

1 the filing of the application with it in accordance with the
2 provisions of this section, the governing body of the
3 municipality with which the application was filed shall review
4 the contents of the application, and shall adopt a resolution
5 either (i) denying the application or (ii) declaring that it
6 is wise, expedient, and necessary that the proposed authority
7 be formed and authorizing the applicants to proceed to form
8 the proposed authority by the filing for record of a
9 certificate of incorporation in accordance with the provisions
10 of Section 11-54-174. The governing body with which the
11 application is filed shall also cause a copy of the
12 application to be spread upon or otherwise made a part of the
13 minutes of the meeting of such governing body at which final
14 action upon said application is taken.

15 "§11-54-174.

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

24 "The certificate of incorporation of the authority
25 shall state:

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

4 "(2) The name of the authority (which shall be "The
5 Commercial Development Authority of the City of _____," with
6 the insertion of the name of the authorizing municipality,
7 unless the Secretary of State shall determine that such name
8 is identical to the name of any other corporation organized
9 under the laws of the state or so nearly similar thereto as to
10 lead to confusion and uncertainty, in which case the
11 incorporators may insert additional identifying words so as to
12 eliminate said duplication or similarity);

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

16 "(4) The name of the authorizing municipality
17 together with the date on which the governing body thereof
18 adopted the authorizing resolution;

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

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

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

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

1 "§11-54-178.

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

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

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

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

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

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

23 "(6) To lease to others any or all of its projects
24 and to charge and collect rent therefor, and to terminate any

1 such lease upon the failure of the lessee to comply with any
2 of the obligations thereof;

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

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

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

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

19 "(11) To appoint, employ, contract with, and provide
20 for the compensation of, such officers, employees, and agents,
21 including but without limitation to engineers, attorneys,
22 management consultants, and fiscal advisers, as the board
23 shall deem necessary for the conduct of the business of the
24 authority;

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

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

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

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

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

25 "§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.

