

1 HB74
2 135408-2
3 By Representative McMillan
4 RFD: County and Municipal Government
5 First Read: 07-FEB-12
6 PFD: 01/23/2012

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8 SYNOPSIS: Under existing law, the municipal planning
9 commission of a municipality has responsibility for
10 the development of subdivisions in the
11 extraterritorial jurisdiction of the municipal
12 planning commission.

13 This bill would provide that the county
14 commission under certain conditions would have
15 jurisdiction over subdivisions in the
16 extraterritorial jurisdiction of the municipality
17 if the county has adopted subdivision regulations
18 unless an agreement is executed between the county,
19 the municipal planning commission, and the
20 municipality authorizing the municipal planning
21 commission to be responsible for subdivision
22 development or unless the municipality and the
23 municipal planning commission specifically vote to
24 override the county's exercise of jurisdiction and
25 the municipal planning commission meets certain
26 statutorily established criteria for regulating and

1 enforcing subdivision regulations in unincorporated
2 areas.

3 This bill would also amend current law
4 requiring the county engineer to approve all plats
5 and maps before filing with the judge of probate to
6 provide that, when the municipal planning
7 commission is responsible for the development of
8 subdivisions, the county engineer would certify the
9 plats and maps for filing after approval by the
10 municipal planning commission.

11
12 A BILL
13 TO BE ENTITLED
14 AN ACT
15

16 To amend Sections 11-52-1, 11-52-30, 11-52-31,
17 11-52-32, and 11-52-33, Code of Alabama 1975, to provide for
18 the county commission to be responsible for the development of
19 subdivisions in the extraterritorial jurisdiction of a
20 municipal planning commission if the county has adopted
21 subdivision regulations unless an agreement is executed
22 between the county, the municipal planning commission, and the
23 municipality to provide for the municipal planning commission
24 to be responsible for subdivision development or unless the
25 municipality and the municipal planning commission under
26 certain conditions specifically vote to override the county's
27 exercise of jurisdiction; to provide that when the municipal

1 planning commission is responsible for the development of
2 subdivisions, the county engineer would certify the plats and
3 maps for filing once approved by the municipal planning
4 commission; and to repeal Sections 11-24-5 and 11-52-36, Code
5 of Alabama 1975.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Sections 11-52-1, 11-52-30, 11-52-31,
8 11-52-32, and 11-52-33, Code of Alabama 1975, are amended to
9 read as follows:

10 "§11-52-1.

11 "When used in this chapter, the following words or
12 phrases shall have the following meanings, respectively,
13 unless the context clearly indicates otherwise:

14 "(1) MUNICIPALITY or MUNICIPAL. Cities or towns.

15 "(2) MAYOR. The chief executive of the municipality,
16 whether the official designation of his office be mayor, city
17 manager, or otherwise.

18 "(3) COUNCIL. The chief legislative body of the
19 municipality.

20 "(4) COUNTY COMMISSION. The chief administrative or
21 legislative body of the county.

22 "(5) STREETS. Streets, avenues, boulevards, roads,
23 lanes, alleys, viaducts, and other ways.

24 "(6) SUBDIVISION. The division of a lot, tract, or
25 parcel of land into two or more lots, plats, sites, or other
26 divisions of land for the purpose, whether immediate or
27 future, of sale, of lease, or of building development. ~~Such~~

1 The term includes resubdivision and, when appropriate to the
2 context, relates to the process of subdividing or to the land
3 or territory subdivided.

4 "§11-52-30.

5 "(a) ~~The~~ Except as otherwise provided herein, the
6 territorial jurisdiction of any municipal planning commission
7 ~~over the subdivision of land~~ shall include all land located in
8 the municipality and all land lying within five miles of the
9 corporate limits of the municipality and not located in any
10 other municipality; except that, in the case of any
11 nonmunicipal land lying within five miles of more than one
12 municipality having a municipal planning commission, the
13 jurisdiction of each municipal planning commission shall
14 terminate at a boundary line equidistant from the respective
15 corporate limits of such municipalities; provided further,
16 that in all counties having a population of 600,000 or more
17 according to the 1950 federal census or any succeeding
18 decennial federal census, the county planning and zoning
19 commission shall be invested with ~~such~~ the authority, except
20 and unless the municipality or municipalities in question are
21 actively exercising zoning jurisdiction and control within the
22 police or five mile jurisdiction or, in the case of a
23 municipality subsequently incorporated, within 180 days from
24 the date of its incorporation; provided, further, that in all
25 counties having a population of 600,000 or more inhabitants
26 according to the 1950 federal census or any succeeding
27 decennial federal census, the county commission of ~~such~~ the

1 county may establish minimum specifications and regulations
2 governing the lay-out, grading, and paving of all streets,
3 avenues, and alleys and the construction or installation of
4 all water, sewer, or drainage pipes or lines in any
5 subdivision lying wholly or partly in areas outside the
6 corporate limits of any municipality in the counties and
7 relating to subdivisions lying within the corporate limits of
8 any municipality in the counties which has declined or failed
9 to exercise zoning jurisdiction and control as provided in
10 this section.

11 "(b) A municipal planning commission, by properly
12 adopted regulation, may provide that the territorial
13 jurisdiction of the municipal planning commission ~~over the~~
14 ~~subdivision of land~~ shall include all land lying within ~~an~~
15 ~~area~~ a radius less than the five miles permitted by this
16 section. The regulation shall establish the territory within
17 which the municipal planning commission will exercise
18 jurisdiction ~~over the subdivision of land~~ to a boundary line
19 equidistant from the corporate limits of the municipality,
20 except, that in the case of any nonmunicipal land lying within
21 the territorial jurisdiction of more than one municipality
22 with a municipal planning commission exercising jurisdiction
23 ~~over the subdivision of land~~ outside the municipal corporate
24 limits, the jurisdiction of each municipal planning commission
25 shall terminate at a boundary line equidistant from the
26 respective corporate limits of each municipality. A copy of
27 the resolution altering the territorial jurisdiction shall be

1 forwarded to the county commission within five days of
2 adoption. Additionally, nothing in this subsection shall be
3 construed to alter the provisions of Article 5 of Chapter 49,
4 which require a municipality to assume responsibility for
5 roads annexed into the municipality under certain
6 circumstances.

7 "(c) (1) If a county commission has adopted
8 subdivision regulations pursuant to Chapter 24 of this title,
9 those subdivision regulations shall apply to the development
10 of subdivisions within the territorial jurisdiction of a
11 municipal planning commission outside the corporate limits of
12 a municipality and shall be regulated and enforced by the
13 county commission in the same manner and to the same extent as
14 other subdivision development governed by the county's
15 subdivision regulations. Notwithstanding the foregoing, a
16 county commission and the municipal planning commission may
17 enter into a written agreement providing that the municipal
18 planning commission shall be responsible for the regulation
19 and enforcement of the development of subdivisions within the
20 territorial jurisdiction of the municipal planning commission
21 under the terms and conditions of the agreement. In order to
22 be effective, the agreement shall be approved by a resolution
23 adopted by the county commission, the municipal governing
24 body, and the municipal planning commission of the
25 municipality, respectively.

26 "(2) In those counties in which the county
27 commission has adopted subdivision regulations pursuant to

1 Chapter 24 of this title and the municipal planning commission
2 has been unsuccessful in reaching an agreement to exercise its
3 jurisdiction as provided in subsection (1), the governing body
4 of the municipality and the municipal planning commission may
5 override the county's enforcement of the regulation of
6 subdivisions within the planning jurisdiction by fully
7 complying with all of the following requirements:

8 "a. The municipal governing body and the municipal
9 planning commission shall each adopt separate resolutions
10 expressing intent to exercise jurisdiction over the
11 construction of subdivisions initiated after the effective
12 date of the resolutions, despite the county commission's
13 objections to the exercise of that authority.

14 "b. The municipal planning commission shall at all
15 times thereafter employ or contract with a licensed
16 professional engineer who shall notify the county commission
17 of the initiation of subdivisions; conduct inspections of the
18 construction of the subdivision; and shall certify, in
19 writing, the compliance with either the municipal or county
20 subdivision regulations, whichever is stricter.

21 "c. The county commission shall retain the authority
22 to require a performance and maintenance bond from the
23 developer, consistent with the requirements for the bonds in
24 the county subdivision regulations, which shall be payable to
25 the county.

26 "d. The county commission shall retain the authority
27 to execute on the bond to make necessary improvements to the

1 public roads and drainage structures of the subdivision while
2 it remains in the unincorporated area of the county.

3 "e. The municipal governing body and the municipal
4 planning commission exercising the authority granted in this
5 subsection may thereafter withdraw their exercise of
6 jurisdiction over future subdivisions located outside the
7 corporate limits of the municipality after not less than six
8 months' notice to the county commission. After withdrawal, the
9 municipal planning commission of the municipality may not
10 reinstate the authority granted in this subsection for 24
11 months after the effective date of its withdrawal.

12 "(d) If a county commission has not adopted
13 subdivision regulations pursuant to Chapter 24 of this title,
14 the municipal planning commission shall have sole jurisdiction
15 for the regulation and enforcement of the development of
16 subdivisions within the territorial jurisdiction of the
17 municipal planning commission.

18 "(e) If the municipal planning commission accepts
19 responsibility for the development of a subdivision within its
20 territorial jurisdiction as provided in subsection (c), the
21 county commission shall not accept any roads or bridges within
22 the subdivision for county maintenance unless the county
23 engineer certifies to the county commission that the road or
24 bridge meets the minimum road and bridge standards of the
25 county. This section shall not apply to any roads or bridges
26 which the county has accepted for maintenance prior to the
27 effective date of the act adding this subsection.

1 "(f) (1) If the county commission is responsible for
2 the regulation and enforcement of a subdivision development
3 within the territorial jurisdiction of a municipal planning
4 commission outside the corporate limits of a municipality, the
5 recording of any map or plat related to the subdivision shall
6 be governed by Chapter 24 of this title.

7 "~~(c) (g) No~~ If the municipal planning commission is
8 responsible for the regulation and enforcement of a
9 subdivision development within the territorial jurisdiction of
10 the municipal planning commission, no map or plat of any
11 subdivision shall be recorded, and no property shall be sold
12 referenced to ~~such~~ the map or plat, until and unless it has
13 been first submitted to and approved by the municipal planning
14 commission, pursuant to Section 11-52-32 and its adopted
15 procedures, and then certified by the county engineer or, ~~in~~
16 his or her designee as follows within 30 days of being
17 submitted to the county engineer: "The undersigned, as County
18 Engineer of the County of _____ of Alabama, hereby
19 certifies on this _____ day of _____, 20____, that the
20 _____ Planning Commission approved the within plat for
21 the recording of same in the Probate Office of
22 _____ County, Alabama ~~absence, by the acting county~~
23 engineer of the county, who shall examine same for compliance
24 with the specifications and regulations of the county
25 commission of the county and, if it is in compliance, shall
26 note his or her approval on the map or plat by noting thereon

1 ~~"approved," giving the date of approval and signing same in~~
2 ~~his or her official capacity.~~

3 ~~"(d)(h) Where any subdivision lies within the~~
4 ~~extraterritorial planning jurisdiction of any municipality~~
5 ~~having exercised extraterritorial jurisdiction, the~~
6 ~~requirement for approval of improvements in the subdivision by~~
7 ~~the county engineer shall in no way diminish, waive, or~~
8 ~~otherwise lessen the requirements of the municipality. The~~
9 ~~more strict requirements, whether of the municipality or of~~
10 ~~the county, must be complied with by the developer. Approval~~
11 ~~by the county engineer pursuant to this subsection shall in no~~
12 ~~way not constitute approval in lieu of or on behalf of any~~
13 ~~municipality with respect to subdivisions lying within its~~
14 ~~extraterritorial planning jurisdiction. All subdivision~~
15 ~~development regulated and enforced by the municipal planning~~
16 ~~commission, wherein all maps or plats must be first submitted~~
17 ~~to and approved by the municipal planning commission or other~~
18 ~~appropriate municipal agency exercising jurisdiction over any~~
19 ~~the subdivision lying within the extraterritorial planning~~
20 ~~jurisdiction and, following approval by such municipal~~
21 ~~planning commission, must then be approved by the county~~
22 ~~engineer or, in his or her absence, by the acting county~~
23 ~~engineer.~~

24 ~~"(e)(i) Nothing in this section shall be interpreted~~
25 ~~as allowing a municipal planning commission or a municipality~~
26 ~~to exercise the power of eminent domain outside of its~~
27 ~~corporate limits.~~

1 "~~(f)~~ (j) Nothing in this section shall be interpreted
2 as allowing a municipal planning commission or a municipality
3 to levy taxes or fees outside of its corporate limits.

4 "(k) Nothing in this section shall limit or impair
5 the authority of a municipality to regulate the construction
6 of buildings within the police jurisdiction of the
7 municipality, including, but not limited to, the issuing of
8 building permits, the inspection of building construction, and
9 the enforcement of building codes.

10 "(l) Nothing in this section shall be construed to
11 grant the county commission or county engineer the authority
12 to regulate subdivision development or approve maps or plats
13 for any developments within the corporate limits of a
14 municipality.

15 "§11-52-31.

16 "~~The~~ Except where the county commission is
17 responsible for the regulation of subdivision regulations
18 within the territorial jurisdiction of a municipal planning
19 commission pursuant to Section 11-52-30, the municipal
20 planning commission shall adopt subdivision regulations
21 governing the subdivision of land within its jurisdiction.
22 ~~Such~~ The regulations may provide for the proper arrangement of
23 streets in relation to other existing or planned streets and
24 to the master plan, for adequate and convenient open spaces
25 for traffic, utilities, access of fire-fighting apparatus,
26 recreation, light and air and for the avoidance of congestion
27 of population, including minimum width and area of lots. ~~Such~~

1 The regulations may include provisions as to the extent to
2 which streets and other ways shall be graded and improved and
3 to which water and sewer and other utility mains, piping, or
4 other facilities shall be installed as a condition precedent
5 to the approval of the plat. The regulations or practice of
6 the municipal planning commission may provide for a tentative
7 approval of the plat previous to ~~such~~ the installation, but
8 any ~~such~~ tentative approval shall be revocable and shall not
9 be entered on the plat. In lieu of the completion of ~~such~~ the
10 improvements and utilities prior to the final approval of the
11 plat, the municipal planning commission may accept a bond with
12 surety to secure to the municipality the actual construction
13 and installation of ~~such~~ the improvements or utilities at a
14 time and according to specifications fixed by or in accordance
15 with the regulations of the municipal planning commission. The
16 municipality is hereby granted the power to enforce ~~such~~ the
17 bond by all appropriate legal and equitable remedies.

18 "All ~~such~~ regulations shall be published as provided
19 by law for the publication of ordinances, and before adoption
20 a public hearing shall be held thereon. A copy thereof shall
21 be certified by the municipal planning commission to the
22 probate judge of the county in which the municipality and
23 territory are located.

24 "§11-52-32.

25 "(a) ~~The~~ Except where the development of a
26 subdivision within the territorial jurisdiction of a municipal
27 planning commission is regulated by the county commission

1 pursuant to Section 11-52-30, the municipal planning
2 commission shall approve or disapprove a plat within 30 days
3 after the submission thereof to it; otherwise, ~~such~~ the plat
4 shall be deemed to have been approved, and a certificate to
5 that effect shall be issued by the municipal planning
6 commission on demand; provided, however, that the applicant
7 for the municipal planning commission's approval may waive
8 this requirement and consent to an extension of such period.
9 The ground of disapproval of any plat shall be stated upon the
10 records of the municipal planning commission. Any plat
11 submitted to the municipal planning commission shall contain
12 the name and address of a person to whom notice of a hearing
13 shall be sent, and no plat shall be acted on by the municipal
14 planning commission without affording a hearing thereon.
15 Notice shall be sent to the ~~said~~ address by registered or
16 certified mail of the time and place of ~~such~~ the hearing not
17 less than five days before the date fixed therefor. Similar
18 notice shall be mailed to the owners of land immediately
19 adjoining the platted land as their names appear upon the
20 plats in the county tax assessor's office and their addresses
21 appear in the directory of the municipality or on the tax
22 records of the municipality or county.

23 "(b) Every plat approved by the municipal planning
24 commission shall, by virtue of ~~such~~ the approval, be deemed to
25 be an amendment of or an addition to or a detail of the
26 municipal plan and a part thereof. Approval of a plat shall

1 not be deemed to constitute or effect an acceptance by the
2 public of any street or other open space shown upon the plat.

3 "(c) The municipal planning commission ~~may~~, from
4 time to time, may recommend to the ~~council~~ governing body of
5 the municipality amendments of the zoning ordinance or map or
6 additions thereto to conform to the municipal planning
7 commission's recommendations for the zoning regulation of the
8 territory comprised within approved subdivisions. The
9 municipal planning commission shall have the power to agree
10 with the application upon use, height, area, or bulk
11 requirements or restrictions governing buildings and premises
12 within the subdivision, provided ~~such~~ the requirements or
13 restrictions do not authorize the violation of the then
14 effective zoning ordinance of the municipality. ~~Such~~ The
15 requirements or restrictions shall be stated upon the plat
16 prior to the approval and recording thereof and shall have the
17 same force of law and be enforceable in the same manner and
18 with the same sanctions and penalties and subject to the same
19 power of amendment or repeal as though set out as a part of
20 the zoning ordinance or map of the municipality.

21 "(d) The municipal planning commission of any Class
22 1 city may elect no fewer than three and no more than five
23 persons who are members of ~~such~~ the municipal planning
24 commission to serve while members thereof and at the pleasure
25 of ~~such~~ the municipal planning commission as a committee to
26 approve or disapprove in the name of ~~such~~ the municipal
27 planning commission any plat presented to ~~such~~ the municipal

1 planning commission. Should any committee member so elected by
2 the municipal planning commission be unable for any reason to
3 serve at any time as a member of ~~said the~~ the committee or should
4 a vacancy occur at any time on the committee, the ~~chairman~~
5 chair of the municipal planning commission shall appoint
6 another member thereof to serve as a member of the committee
7 until such time as the replaced member of the committee shall
8 resume his or her duties or until the municipal planning
9 commission shall fill ~~said the~~ the vacancy by electing another of
10 its members to serve on the committee. ~~Such~~ The committee
11 shall be governed by all the provisions of this article
12 applicable to municipal planning commissions in regard to the
13 approval or disapproval of any ~~such~~ plat and to all
14 regulations adopted by ~~such the~~ the municipal planning commission
15 in regard thereto not inconsistent with the provisions of this
16 article. Any plat submitted to ~~such the~~ the committee shall be
17 considered as if submitted to the municipal planning
18 commission, and any approval or disapproval of any ~~such~~ plat
19 by ~~such the~~ the committee shall be as if the same were approved or
20 disapproved by the municipal planning commission; provided,
21 however, that any party aggrieved by any decision of ~~such the~~
22 committee ~~may,~~ within 15 days thereafter, may appeal therefrom
23 to the full municipal planning commission of ~~such the~~
24 municipality by filing with ~~such the~~ the municipal planning
25 commission a written notice of appeal specifying the decision
26 from which the appeal is taken. In the case of ~~such an~~ an appeal,
27 ~~such the~~ the committee shall cause a transcript of all papers and

1 documents filed with the committee in connection with the
2 matter involved in the appeal to be certified to the municipal
3 planning commission to which the appeal is taken and the
4 municipal planning commission ~~shall~~, within 45 days from the
5 taking of ~~such~~ the appeal, in accordance with ~~such~~ the
6 reasonable regulations as it may from time to time adopt,
7 shall make ~~such~~ an investigation as it deems proper and either
8 affirm the decision of ~~such~~ the committee or render ~~such~~ the
9 decision as in the judgment of ~~such~~ the municipal planning
10 commission should have been rendered by ~~such~~ the committee.

11 "§11-52-33.

12 "(a) Whoever, being Where the regulation of a
13 subdivision development is the responsibility of the municipal
14 planning commission, if the owner or agent of the owner of any
15 land located within a subdivision, transfers or sells or
16 agrees to sell or negotiates to sell any land by reference to
17 or exhibition of or by other use of a plat of a subdivision
18 before ~~such~~ the plat has been approved by the municipal
19 planning commission and recorded or filed in the office of the
20 appropriate county probate office shall forfeit and pay a
21 penalty of ~~\$100.00~~ one hundred dollars (\$100) for each lot or
22 parcel so transferred or sold or agreed or negotiated to be
23 sold, and the description of ~~such~~ the lot or parcel by metes
24 and bounds in the instrument of transfer or other document
25 used in the process of selling or transferring shall not
26 exempt the transaction from ~~such~~ the penalties or from the
27 remedies provided in this section.

1 "(b) The municipal corporation may enjoin ~~such~~ the
2 transfer or sale or agreement by a civil action for injunction
3 brought in any court of competent jurisdiction or may recover
4 the same penalty provided in this section by a civil action in
5 any court of competent jurisdiction.

6 "(c) Where the county commission is responsible for
7 regulation of subdivision development within the territorial
8 jurisdiction of a municipal planning commission, enforcement
9 of the subdivision regulations of the county shall be as
10 provided in Chapter 24 of this title, and any penalties
11 assessed against a developer for failure to comply with the
12 subdivision regulations of the county shall be as provided
13 therein."

14 Section 2. This act shall not affect any application
15 for development or any subdivision filed prior to the
16 effective date of this act.

17 Section 3. Nothing contained in this act requires a
18 municipality to assume responsibility for roads or
19 infrastructure in subdivisions approved by the city engineer
20 outside the municipal corporate limits or alters, amends, or
21 supersedes the requirements relating to responsibility for
22 road and bridge maintenance pursuant to Section 11-49-80, Code
23 of Alabama 1975.

24 Section 4. All laws or parts of laws which conflict
25 with this act are repealed. Sections 11-24-5 and 11-52-36,
26 Code of Alabama 1975, are specifically repealed.

1 Section 5. This act shall become effective on
2 October 1, 2012, following its passage and approval by the
3 Governor, or its otherwise becoming law.