

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

1 ENGROSSED

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4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 To amend Sections 11-52-1, 11-52-30, 11-52-31,
9 11-52-32, and 11-52-33, Code of Alabama 1975, to provide for
10 the county commission to be responsible for the development of
11 subdivisions in the extraterritorial jurisdiction of a
12 municipal planning commission if the county has adopted
13 subdivision regulations unless an agreement is executed
14 between the county, the municipal planning commission, and the
15 municipality to provide for the municipal planning commission
16 to be responsible for subdivision development or unless the
17 municipality and the municipal planning commission under
18 certain conditions specifically vote to override the county's
19 exercise of jurisdiction; to provide that when the municipal
20 planning commission is responsible for the development of
21 subdivisions, the county engineer would certify the plats and
22 maps for filing once approved by the municipal planning
23 commission; and to repeal Sections 11-24-5 and 11-52-36, Code
24 of Alabama 1975.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 11-52-1, 11-52-30, 11-52-31,
2 11-52-32, and 11-52-33, Code of Alabama 1975, are amended to
3 read as follows:

4 "§11-52-1.

5 "When used in this chapter, the following words or
6 phrases shall have the following meanings, respectively,
7 unless the context clearly indicates otherwise:

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

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

12 "(3) COUNCIL. The chief legislative body of the
13 municipality.

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

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

18 "(6) SUBDIVISION. The division of a lot, tract, or
19 parcel of land into two or more lots, plats, sites, or other
20 divisions of land for the purpose, whether immediate or
21 future, of sale, of lease, or of building development. ~~Such~~
22 The term includes resubdivision and, when appropriate to the
23 context, relates to the process of subdividing or to the land
24 or territory subdivided.

25 "§11-52-30.

26 "(a) ~~The~~ Except as otherwise provided herein, the
27 territorial jurisdiction of any municipal planning commission

1 ~~over the subdivision of land~~ shall include all land located in
2 the municipality and all land lying within five miles of the
3 corporate limits of the municipality and not located in any
4 other municipality; except that, in the case of any
5 nonmunicipal land lying within five miles of more than one
6 municipality having a municipal planning commission, the
7 jurisdiction of each municipal planning commission shall
8 terminate at a boundary line equidistant from the respective
9 corporate limits of such municipalities; provided further,
10 that in all counties having a population of 600,000 or more
11 according to the 1950 federal census or any succeeding
12 decennial federal census, the county planning and zoning
13 commission shall be invested with ~~such~~ the authority, except
14 and unless the municipality or municipalities in question are
15 actively exercising zoning jurisdiction and control within the
16 police or five mile jurisdiction or, in the case of a
17 municipality subsequently incorporated, within 180 days from
18 the date of its incorporation; provided, further, that in all
19 counties having a population of 600,000 or more inhabitants
20 according to the 1950 federal census or any succeeding
21 decennial federal census, the county commission of ~~such~~ the
22 county may establish minimum specifications and regulations
23 governing the lay-out, grading, and paving of all streets,
24 avenues, and alleys and the construction or installation of
25 all water, sewer, or drainage pipes or lines in any
26 subdivision lying wholly or partly in areas outside the
27 corporate limits of any municipality in the counties and

1 relating to subdivisions lying within the corporate limits of
2 any municipality in the counties which has declined or failed
3 to exercise zoning jurisdiction and control as provided in
4 this section.

5 "(b) A municipal planning commission, by properly
6 adopted regulation, may provide that the territorial
7 jurisdiction of the municipal planning commission ~~over the~~
8 ~~subdivision of land~~ shall include all land lying within ~~an~~
9 ~~area~~ a radius less than the five miles permitted by this
10 section. The regulation shall establish the territory within
11 which the municipal planning commission will exercise
12 jurisdiction ~~over the subdivision of land~~ to a boundary line
13 equidistant from the corporate limits of the municipality,
14 except, that in the case of any nonmunicipal land lying within
15 the territorial jurisdiction of more than one municipality
16 with a municipal planning commission exercising jurisdiction
17 ~~over the subdivision of land~~ outside the municipal corporate
18 limits, the jurisdiction of each municipal planning commission
19 shall terminate at a boundary line equidistant from the
20 respective corporate limits of each municipality. A copy of
21 the resolution altering the territorial jurisdiction shall be
22 forwarded to the county commission within five days of
23 adoption. Additionally, nothing in this subsection shall be
24 construed to alter the provisions of Article 5 of Chapter 49,
25 which require a municipality to assume responsibility for
26 roads annexed into the municipality under certain
27 circumstances.

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

20 "(2) In those counties in which the county
21 commission has adopted subdivision regulations pursuant to
22 Chapter 24 of this title and the municipal planning commission
23 has been unsuccessful in reaching an agreement to exercise its
24 jurisdiction as provided in subsection (1), the governing body
25 of the municipality and the municipal planning commission may
26 override the county's enforcement of the regulation of

1 subdivisions within the planning jurisdiction by fully
2 complying with all of the following requirements:

3 "a. The municipal governing body and the municipal
4 planning commission shall each adopt separate resolutions
5 expressing intent to exercise jurisdiction over the
6 construction of subdivisions initiated after the effective
7 date of the resolutions, despite the county commission's
8 objections to the exercise of that authority.

9 "b. The municipal planning commission shall at all
10 times thereafter employ or contract with a licensed
11 professional engineer who shall notify the county commission
12 of the initiation of subdivisions; conduct inspections of the
13 construction of the subdivision; and shall certify, in
14 writing, the compliance with ~~either the municipal or county~~ the subdivision
15 subdivision regulations, whichever is stricter the subdivision
16 regulations governing the development of the subdivision.

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

22 "d. The county commission shall retain the authority
23 to execute on the bond to make necessary improvements to the
24 public roads and drainage structures of the subdivision while
25 it remains in the unincorporated area of the county.

26 "e. The municipal governing body and the municipal
27 planning commission exercising the authority granted in this

1 subsection may thereafter withdraw their exercise of
2 jurisdiction over future subdivisions located outside the
3 corporate limits of the municipality after not less than six
4 months' notice to the county commission. After withdrawal, the
5 municipal planning commission of the municipality may not
6 reinstate the authority granted in this subsection for 24
7 months after the effective date of its withdrawal.

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

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

24 "(f) (1) If the county commission is responsible for
25 the regulation and enforcement of a subdivision development
26 within the territorial jurisdiction of a municipal planning
27 commission outside the corporate limits of a municipality, the

1 recording of any map or plat related to the subdivision shall
2 be governed by Chapter 24 of this title.

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

25 ~~"(d)(h) Where any subdivision lies within the~~
26 ~~extraterritorial planning jurisdiction of any municipality~~
27 ~~having exercised extraterritorial jurisdiction, the~~

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

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

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

26 ~~"(k)~~ Nothing in this section shall limit or impair
27 the authority of a municipality to regulate the construction

1 of buildings within the police jurisdiction of the
2 municipality, including, but not limited to, the issuing of
3 building permits, the inspection of building construction, and
4 the enforcement of building codes.

5 "(1) Nothing in this section shall be construed to
6 grant the county commission or county engineer the authority
7 to regulate subdivision development or approve maps or plats
8 for any developments within the corporate limits of a
9 municipality.

10 "§11-52-31.

11 ~~The~~ Except where the county commission is
12 responsible for the regulation of subdivision regulations
13 within the territorial jurisdiction of a municipal planning
14 commission pursuant to Section 11-52-30, the municipal
15 planning commission shall adopt subdivision regulations
16 governing the subdivision of land within its jurisdiction.
17 ~~Such~~ The regulations may provide for the proper arrangement of
18 streets in relation to other existing or planned streets and
19 to the master plan, for adequate and convenient open spaces
20 for traffic, utilities, access of fire-fighting apparatus,
21 recreation, light and air and for the avoidance of congestion
22 of population, including minimum width and area of lots. ~~Such~~
23 The regulations may include provisions as to the extent to
24 which streets and other ways shall be graded and improved and
25 to which water and sewer and other utility mains, piping, or
26 other facilities shall be installed as a condition precedent
27 to the approval of the plat. The regulations or practice of

1 the municipal planning commission may provide for a tentative
2 approval of the plat previous to ~~such~~ the installation, but
3 any ~~such~~ tentative approval shall be revocable and shall not
4 be entered on the plat. In lieu of the completion of ~~such~~ the
5 improvements and utilities prior to the final approval of the
6 plat, the municipal planning commission may accept a bond with
7 surety to secure to the municipality the actual construction
8 and installation of ~~such~~ the improvements or utilities at a
9 time and according to specifications fixed by or in accordance
10 with the regulations of the municipal planning commission. The
11 municipality is hereby granted the power to enforce ~~such~~ the
12 bond by all appropriate legal and equitable remedies.

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

19 "§11-52-32.

20 "(a) ~~The~~ Except where the development of a
21 subdivision within the territorial jurisdiction of a municipal
22 planning commission is regulated by the county commission
23 pursuant to Section 11-52-30, the municipal planning
24 commission shall approve or disapprove a plat within 30 days
25 after the submission thereof to it; otherwise, ~~such~~ the plat
26 shall be deemed to have been approved, and a certificate to
27 that effect shall be issued by the municipal planning

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

18 "(b) Every plat approved by the municipal planning
19 commission shall, by virtue of ~~such~~ the approval, be deemed to
20 be an amendment of or an addition to or a detail of the
21 municipal plan and a part thereof. Approval of a plat shall
22 not be deemed to constitute or effect an acceptance by the
23 public of any street or other open space shown upon the plat.

24 "(c) The municipal planning commission ~~may~~, from
25 time to time, may recommend to the ~~council~~ governing body of
26 the municipality amendments of the zoning ordinance or map or
27 additions thereto to conform to the municipal planning

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

15 "(d) The municipal planning commission of any Class
16 1 city may elect no fewer than three and no more than five
17 persons who are members of ~~such~~ the municipal planning
18 commission to serve while members thereof and at the pleasure
19 of ~~such~~ the municipal planning commission as a committee to
20 approve or disapprove in the name of ~~such~~ the municipal
21 planning commission any plat presented to ~~such~~ the municipal
22 planning commission. Should any committee member so elected by
23 the municipal planning commission be unable for any reason to
24 serve at any time as a member of ~~said~~ the committee or should
25 a vacancy occur at any time on the committee, the ~~chairman~~
26 chair of the municipal planning commission shall appoint
27 another member thereof to serve as a member of the committee

1 until such time as the replaced member of the committee shall
2 resume his or her duties or until the municipal planning
3 commission shall fill ~~said~~ the vacancy by electing another of
4 its members to serve on the committee. ~~Such~~ The committee
5 shall be governed by all the provisions of this article
6 applicable to municipal planning commissions in regard to the
7 approval or disapproval of any ~~such~~ plat and to all
8 regulations adopted by ~~such~~ the municipal planning commission
9 in regard thereto not inconsistent with the provisions of this
10 article. Any plat submitted to ~~such~~ the committee shall be
11 considered as if submitted to the municipal planning
12 commission, and any approval or disapproval of any ~~such~~ plat
13 by ~~such~~ the committee shall be as if the same were approved or
14 disapproved by the municipal planning commission; provided,
15 however, that any party aggrieved by any decision of ~~such~~ the
16 committee ~~may,~~ within 15 days thereafter, may appeal therefrom
17 to the full municipal planning commission of ~~such~~ the
18 municipality by filing with ~~such~~ the municipal planning
19 commission a written notice of appeal specifying the decision
20 from which the appeal is taken. In the case of ~~such~~ an appeal,
21 ~~such~~ the committee shall cause a transcript of all papers and
22 documents filed with the committee in connection with the
23 matter involved in the appeal to be certified to the municipal
24 planning commission to which the appeal is taken and the
25 municipal planning commission ~~shall,~~ within 45 days from the
26 taking of ~~such~~ the appeal, in accordance with ~~such~~ the
27 reasonable regulations as it may from time to time adopt,

1 shall make ~~such an~~ investigation as it deems proper and either
2 affirm the decision of ~~such the~~ committee or render ~~such the~~
3 decision as in the judgment of ~~such the~~ municipal planning
4 commission should have been rendered by ~~such the~~ committee.

5 "§11-52-33.

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

22 "(b) The municipal corporation may enjoin ~~such the~~
23 transfer or sale or agreement by a civil action for injunction
24 brought in any court of competent jurisdiction or may recover
25 the same penalty provided in this section by a civil action in
26 any court of competent jurisdiction.

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

9 Section 2. This act shall not affect any application
10 for development or any subdivision filed prior to the
11 effective date of this act.

12 Additionally, in the event the municipal planning
13 commission lawfully assumes the authority to exercise control
14 over the development of subdivisions in an area where the
15 county commission has previously exercised regulation of
16 subdivision development, the municipal planning commission's
17 regulatory authority shall not apply to a subdivision
18 development which is already being regulated and enforced by
19 the county commission pursuant to an application for plat
20 approval submitted to the county commission by the developer
21 prior to the date on which the municipal planning commission
22 lawfully assumed responsibility for the development of
23 subdivisions pursuant to this chapter.

24 Section 3. Nothing contained in this act requires a
25 municipality to assume responsibility for roads or
26 infrastructure in subdivisions approved by the city engineer
27 outside the municipal corporate limits or alters, amends, or

1 supersedes the requirements relating to responsibility for
2 road and bridge maintenance pursuant to Section 11-49-80, Code
3 of Alabama 1975.

4 Nothing contained in this Act shall be construed to
5 effect or limit the authority conferred by Sections 37-4-130
6 and 37-4-131, Code of Alabama 1975.

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

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

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on County and Mu-
nicipal Government..... 07-FEB-12

Read for the second time and placed
on the calendar 2 amendments 16-FEB-12

Read for the third time and passed
as amended..... 08-MAR-12

Yeas 96, Nays 0, Abstains 0

Greg Pappas
Clerk