

1 SB236
2 135408-9
3 By Senators Sanford and Orr
4 RFD: Governmental Affairs
5 First Read: 08-FEB-12

1 SB236

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4 ENROLLED, An Act,

5 To amend Sections 11-52-1, 11-52-30, 11-52-31,
6 11-52-32, and 11-52-33, Code of Alabama 1975, to provide for
7 the county commission to be responsible for the development of
8 subdivisions in the extraterritorial jurisdiction of a
9 municipal planning commission if the county has adopted
10 subdivision regulations unless an agreement is executed
11 between the county, the municipal planning commission, and the
12 municipality to provide for the municipal planning commission
13 to be responsible for subdivision development or unless the
14 municipality and the municipal planning commission under
15 certain conditions specifically vote to override the county's
16 exercise of jurisdiction; to provide that when the municipal
17 planning commission is responsible for the development of
18 subdivisions, the county engineer would certify the plats and
19 maps for filing once approved by the municipal planning
20 commission; and to repeal Sections 11-24-5 and 11-52-36, Code
21 of Alabama 1975.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Sections 11-52-1, 11-52-30, 11-52-31,
24 11-52-32, and 11-52-33, Code of Alabama 1975, are amended to
25 read as follows:

1 "§11-52-1.

2 "When used in this chapter, the following words or
3 phrases shall have the following meanings, respectively,
4 unless the context clearly indicates otherwise:

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

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

9 "(3) COUNCIL. The chief legislative body of the
10 municipality.

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

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

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

22 "§11-52-30.

23 "(a) Except as otherwise provided herein, the
24 territorial jurisdiction of any municipal planning commission
25 shall include all land located in the municipality and all

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

1 municipality in the counties and relating to subdivisions
2 lying within the corporate limits of any municipality in the
3 counties which has declined or failed to exercise zoning
4 jurisdiction and control as provided in 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 shall
8 include all land lying within a radius less than the five
9 miles permitted by this section. The regulation shall
10 establish the territory within which the municipal planning
11 commission will exercise jurisdiction to a boundary line
12 equidistant from the corporate limits of the municipality,
13 except, that in the case of any nonmunicipal land lying within
14 the territorial jurisdiction of more than one municipality
15 with a municipal planning commission exercising jurisdiction
16 outside the municipal corporate limits, the jurisdiction of
17 each municipal planning commission shall terminate at a
18 boundary line equidistant from the respective corporate limits
19 of each municipality. A copy of the resolution altering the
20 territorial jurisdiction shall be forwarded to the county
21 commission within five days of adoption. Additionally, nothing
22 in this subsection shall be construed to alter the provisions
23 of Article 5 of Chapter 49, which require a municipality to
24 assume responsibility for roads annexed into the municipality
25 under certain 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

1 override the county's enforcement of the regulation of
2 subdivisions within the planning jurisdiction by fully
3 complying with all of the following requirements:

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

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

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

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

16 "(e) If the municipal planning commission accepts
17 responsibility for the development of a subdivision within its
18 territorial jurisdiction as provided in subsection (c), the
19 county commission shall not accept any roads or bridges within
20 the subdivision for county maintenance unless the county
21 engineer certifies to the county commission that the road or
22 bridge meets the minimum road and bridge standards of the
23 county. This section shall not apply to any roads or bridges
24 which the county has accepted for maintenance prior to the
25 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 "(g) 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 outside the corporate limits
 11 of the municipality, no map or plat of any subdivision shall
 12 be recorded, and no property shall be sold referenced to the
 13 map or plat, until and unless it has been first submitted to
 14 and approved by the municipal planning commission, pursuant to
 15 Section 11-52-32 and its adopted procedures, and then
 16 certified by the county engineer or his or her designee as
 17 follows within 30 days of being submitted to the county
 18 engineer: "The undersigned, as County Engineer of the County
 19 of _____ of Alabama, hereby certifies on this _____ day
 20 of _____, 20____, that the _____ Planning Commission
 21 approved the within plat for the recording of same in the
 22 Probate Office of _____County, Alabama.

23 "(h) Approval by the county engineer pursuant to
 24 this subsection shall not constitute approval in lieu of or on
 25 behalf of any municipality with respect to subdivision

1 development regulated and enforced by the municipal planning
2 commission, wherein all maps or plats must be first submitted
3 to and approved by the municipal planning commission or other
4 appropriate municipal agency exercising jurisdiction over the
5 subdivision.

6 "(i) Nothing in this section shall be interpreted as
7 allowing a municipal planning commission or a municipality to
8 exercise the power of eminent domain outside of its corporate
9 limits.

10 "(j) Nothing in this section shall be interpreted as
11 allowing a municipal planning commission or a municipality to
12 levy taxes or fees outside of its corporate limits.

13 "(k) Nothing in this section shall limit or impair
14 the authority of a municipality to regulate the construction
15 of buildings within the police jurisdiction of the
16 municipality, including, but not limited to, the issuing of
17 building permits, the inspection of building construction, and
18 the enforcement of building codes.

19 "(l) Nothing in this section shall be construed to
20 grant the county commission or county engineer the authority
21 to regulate subdivision development or approve maps or plats
22 for any developments within the corporate limits of a
23 municipality.

24 "§11-52-31.

1 "Except where the county commission is responsible
2 for the regulation of subdivision regulations within the
3 territorial jurisdiction of a municipal planning commission
4 pursuant to Section 11-52-30, the municipal planning
5 commission shall adopt subdivision regulations governing the
6 subdivision of land within its jurisdiction. The regulations
7 may provide for the proper arrangement of streets in relation
8 to other existing or planned streets and to the master plan,
9 for adequate and convenient open spaces for traffic,
10 utilities, access of fire-fighting apparatus, recreation,
11 light and air and for the avoidance of congestion of
12 population, including minimum width and area of lots. The
13 regulations may include provisions as to the extent to which
14 streets and other ways shall be graded and improved and to
15 which water and sewer and other utility mains, piping, or
16 other facilities shall be installed as a condition precedent
17 to the approval of the plat. The regulations or practice of
18 the municipal planning commission may provide for a tentative
19 approval of the plat previous to the installation, but any
20 tentative approval shall be revocable and shall not be entered
21 on the plat. In lieu of the completion of the improvements and
22 utilities prior to the final approval of the plat, the
23 municipal planning commission may accept a bond with surety to
24 secure to the municipality the actual construction and
25 installation of the improvements or utilities at a time and

1 according to specifications fixed by or in accordance with the
2 regulations of the municipal planning commission. The
3 municipality is hereby granted the power to enforce the bond
4 by all appropriate legal and equitable remedies.

5 "All regulations shall be published as provided by
6 law for the publication of ordinances, and before adoption a
7 public hearing shall be held thereon. A copy thereof shall be
8 certified by the municipal planning commission to the probate
9 judge of the county in which the municipality and territory
10 are located.

11 "§11-52-32.

12 "(a) Except where the development of a subdivision
13 within the territorial jurisdiction of a municipal planning
14 commission is regulated by the county commission pursuant to
15 Section 11-52-30, the municipal planning commission shall
16 approve or disapprove a plat within 30 days after the
17 submission thereof to it; otherwise, the plat shall be deemed
18 to have been approved, and a certificate to that effect shall
19 be issued by the municipal planning commission on demand;
20 provided, however, that the applicant for the municipal
21 planning commission's approval may waive this requirement and
22 consent to an extension of such period. The ground of
23 disapproval of any plat shall be stated upon the records of
24 the municipal planning commission. Any plat submitted to the
25 municipal planning commission shall contain the name and

1 address of a person to whom notice of a hearing shall be sent,
2 and no plat shall be acted on by the municipal planning
3 commission without affording a hearing thereon. Notice shall
4 be sent to the address by registered or certified mail of the
5 time and place of the hearing not less than five days before
6 the date fixed therefor. Similar notice shall be mailed to the
7 owners of land immediately adjoining the platted land as their
8 names appear upon the plats in the county tax assessor's
9 office and their addresses appear in the directory of the
10 municipality or on the tax records of the municipality or
11 county.

12 "(b) Every plat approved by the municipal planning
13 commission shall, by virtue of the approval, be deemed to be
14 an amendment of or an addition to or a detail of the municipal
15 plan and a part thereof. Approval of a plat shall not be
16 deemed to constitute or effect an acceptance by the public of
17 any street or other open space shown upon the plat.

18 "(c) The municipal planning commission, from time to
19 time, may recommend to the governing body of the municipality
20 amendments of the zoning ordinance or map or additions thereto
21 to conform to the municipal planning commission's
22 recommendations for the zoning regulation of the territory
23 comprised within approved subdivisions. The municipal planning
24 commission shall have the power to agree with the application
25 upon use, height, area, or bulk requirements or restrictions

1 governing buildings and premises within the subdivision,
2 provided the requirements or restrictions do not authorize the
3 violation of the then effective zoning ordinance of the
4 municipality. The requirements or restrictions shall be stated
5 upon the plat prior to the approval and recording thereof and
6 shall have the same force of law and be enforceable in the
7 same manner and with the same sanctions and penalties and
8 subject to the same power of amendment or repeal as though set
9 out as a part of the zoning ordinance or map of the
10 municipality.

11 "(d) The municipal planning commission of any Class
12 1 city may elect no fewer than three and no more than five
13 persons who are members of the municipal planning commission
14 to serve while members thereof and at the pleasure of the
15 municipal planning commission as a committee to approve or
16 disapprove in the name of the municipal planning commission
17 any plat presented to the municipal planning commission.
18 Should any committee member so elected by the municipal
19 planning commission be unable for any reason to serve at any
20 time as a member of the committee or should a vacancy occur at
21 any time on the committee, the chair of the municipal planning
22 commission shall appoint another member thereof to serve as a
23 member of the committee until such time as the replaced member
24 of the committee shall resume his or her duties or until the
25 municipal planning commission shall fill the vacancy by

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

1 in the judgment of the municipal planning commission should
2 have been rendered by the committee.

3 "§11-52-33.

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

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

1 infrastructure in subdivisions approved by the city engineer
2 outside the municipal corporate limits or alters, amends, or
3 supersedes the requirements relating to responsibility for
4 road and bridge maintenance pursuant to Section 11-49-80, Code
5 of Alabama 1975.

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

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

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB236
Senate 22-MAR-12
I hereby certify that the within Act originated in and passed
the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Passed: 01-MAY-12

By: Senator Sanford