

1 HB474  
2 157915-1  
3 By Representatives McMillan, Shiver, Baker and Faust  
4 RFD: County and Municipal Government  
5 First Read: 13-FEB-14

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8 SYNOPSIS: The Court of Civil Appeals, in Kilgore  
9 Development, Inc. v. Woodland Place, LLC, has ruled  
10 that a contract for the purchase and sale of lots  
11 prior to a plat being approved is void because the  
12 contract would violate existing subdivision laws.

13 This bill would provide that county and  
14 municipal laws relating to the regulation of  
15 subdivisions would not apply to contracts to  
16 purchase or sell lots which are planned to be  
17 developed. Approval of the subdivision plat and  
18 recording of the plat would be required before a  
19 lot could be conveyed to any third party.

20 This bill would also make certain provisions  
21 consistent in county and municipal subdivision  
22 laws.

23  
24 A BILL  
25 TO BE ENTITLED  
26 AN ACT  
27

1           To amend Sections 11-19-1, 11-19-15, 11-24-1,  
2           11-24-2, 11-24-3, 11-52-1, and 11-52-33, Code of Alabama 1975,  
3           relating to certain laws authorizing counties and  
4           municipalities to regulate subdivisions; to provide that laws  
5           would not apply to contracts to purchase lots prior to the  
6           recording of an approved subdivision plat under certain  
7           conditions and to modify certain definitional and procedural  
8           provisions consistent among the laws.

9           BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10           Section 1. Sections 11-19-1, 11-19-15, 11-24-1,  
11           11-24-2, 11-24-3, 11-52-1, and 11-52-33, Code of Alabama 1975,  
12           are amended to read as follows:

13           "§11-19-1.

14           "For the purposes of this chapter, the following  
15           words and phrases unless otherwise clearly indicated shall  
16           have the following meanings:

17           "(1) COUNTY GOVERNING BODY. The county commission of  
18           each county in this state.

19           "(2) FLOOD or FLOODING. The general and temporary  
20           condition of partial or complete inundation of normally dry  
21           land areas:

22           "a. From the overflow of streams, rivers, and other  
23           inland waters, or

24           "b. From tidal surges, abnormally high tidal waters,  
25           tidal waves, or rising coastal waters resulting from tsunamis,  
26           hurricanes, or other severe storms.

1           "(3) FLOOD-PRONE AREA. Any area with a frequency of  
2 inundation of once in 100 years as defined by qualified  
3 hydrologists or engineers using methods that are generally  
4 accepted by persons engaged in the field of hydrology and  
5 engineering.

6           "(4) LAND-USE AND CONTROL MEASURES. Zoning  
7 ordinances, subdivision regulations, building codes, health  
8 regulations, and other applications and extensions of the  
9 normal police power to provide safe standards of occupancy for  
10 prudent use of flood-prone areas.

11           "(5) SUBDIVISION. The division of a lot, tract, or  
12 parcel of land into two or more lots, plats, sites, or other  
13 divisions of land for the purpose, whether immediate or  
14 future, for sale or building development. It includes  
15 resubdivision and, when appropriate to the context, relates to  
16 the process of subdividing or to the land or territory  
17 subdivided. Development includes, but is not limited to, the  
18 design work of lot layout, the construction of drainage  
19 structures, the construction of buildings or public use areas,  
20 the planning and construction of public streets and public  
21 roads, and the placement of public utilities. A subdivision  
22 does not include the construction or development of roads or  
23 buildings on private property to be used for agricultural  
24 purposes.

25           "§11-19-15.

26           "Whoever, being the owner or agent of the owner of  
27 any land located within a subdivision within the flood-prone

1 areas transfers or sells ~~or agrees to sell or negotiates to~~  
2 ~~sell~~ any land by reference to, or exhibition of or by other  
3 use of a plat of a subdivision before such plat has been  
4 approved by the county planning commission and recorded or  
5 filed in the office of the judge of probate shall be guilty of  
6 a misdemeanor and, upon conviction thereof, shall be punished  
7 as provided by law, and the description of such lot or parcel  
8 by metes and bounds in the instrument of transfer or  
9 conveyance or other document used in the process of selling or  
10 transferring shall not exempt the transaction from the  
11 penalties or remedies provided in this chapter. The county  
12 commission may enjoin such transfer or sale ~~or agreement~~ by  
13 action for injunction brought in any court of equity  
14 jurisdiction or may recover the same penalty by a civil action  
15 in any court of competent jurisdiction. Nothing in this  
16 article shall impair, impede, or prohibit any person or entity  
17 from offering for reservation, sale, or lease, negotiating for  
18 sale or lease, leasing, entering into any otherwise valid and  
19 enforceable contract for the reservation, purchase, lease, or  
20 sale of any lot within any proposed subdivision prior to its  
21 approval, and no county shall adopt or enforce any rule,  
22 regulation, or ordinance, or take any other action that would  
23 impair, impede, or prohibit any such action prior to the  
24 approval of any proposed subdivision.

25 "§11-24-1.

26 "(a) When used in this chapter, the following words  
27 shall have the following meanings:

1           "(1) COUNTY. A political subdivision of the state  
2 created by statute to aid in the administration of government.

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

5           "(3) STREETS. Streets, avenues, boulevards, roads,  
6 lanes, alleys, viaducts, and other roads.

7           "(4) SUBDIVISION. The ~~development and~~ division of a  
8 lot, tract, or parcel of land into two or more lots, plats,  
9 sites, or ~~otherwise~~ other division of land for the purpose,  
10 whether immediate or future, of ~~establishing or creating a~~  
11 ~~subdivision through the~~ sale, lease, or building development.  
12 The term includes resubdivision and, when appropriate to the  
13 context, relates to the process of subdividing or to the land  
14 or territory subdivided. Development includes, but is not  
15 limited to, the design work of lot layout, the construction of  
16 drainage structures, the construction of buildings or public  
17 use areas, the planning and construction of public streets and  
18 public roads, and the placement of public utilities. A  
19 subdivision does not include the construction or development  
20 of roads or buildings on private property to be used for  
21 agricultural purposes.

22           "(b) The county commission or like governing body of  
23 each county in the state shall be authorized to regulate the  
24 minimum size of lots, the planning and construction of all  
25 public streets, public roads, and drainage structures and  
26 require proper placement of public utilities to be located in  
27 proposed subdivisions of land or in proposed additions to

1 subdivisions of land existing at the time of the enactment of  
2 this chapter where the subdivisions are situated outside the  
3 corporate limits of any municipality in the county. The  
4 placement of public utilities shall not be inconsistent with  
5 the requirements of the Southern Standard Building Code, state  
6 and federal laws, and regulations of state and federal  
7 regulatory agencies. If the county commission or like  
8 governing body of any county shall require the placement of  
9 public utility facilities in any subdivision or addition  
10 thereto in a manner which is other than the most economical  
11 method available from an engineering standpoint, then the  
12 developer of the subdivision or addition shall reimburse the  
13 utility for the difference in cost between the method so  
14 required by the county governing body and the most economical  
15 method available.

16 "(c) The county commission or like governing body of  
17 each county in the state may establish a board of developers  
18 to make suggestions to the commission regarding the  
19 development and division of subdivisions. The board may advise  
20 the commission on the contents of the regulations, revisions  
21 that need to be made to the regulations, and assist in  
22 resolving disputes between the commission and developers.

23 "§11-24-2.

24 "(a) It shall be the duty of the owner and developer  
25 of each subdivision to have all construction completed in  
26 conformity with this chapter and, prior to beginning any  
27 construction or development, to submit the proposed plat to

1 the county commission for approval, ~~and~~ obtain a permit to  
2 develop as required in this section, and file or record the  
3 plat in the office of the judge of probate. The permit to  
4 develop shall be obtained and the approved plat of the  
5 subdivision shall be recorded before the actual sale, ~~offering~~  
6 ~~for sale,~~ or transfer, ~~or lease~~ of any lots from the  
7 subdivision or addition to the public, it must include a plan  
8 to deliver utilities including water, and shall only be issued  
9 upon approval of the proposed plat by the county commission,  
10 and the description of any lot or parcel by metes and bounds  
11 in the instrument of transfer or conveyance or other document  
12 used in the process of selling or transferring shall not  
13 exempt the transaction from the penalties or remedies provided  
14 in this chapter. Nothing in this article shall impair, impede,  
15 or prohibit any person or entity from offering for  
16 reservation, sale, or lease, negotiating for sale or lease,  
17 leasing, entering into any otherwise valid and enforceable  
18 contract for the reservation, purchase, lease, or sale of any  
19 lot within any proposed subdivision prior to its approval, and  
20 no county shall adopt or enforce any rule, regulation, or  
21 ordinance, or take any other action that would impair, impede,  
22 or prohibit any such action prior to the approval of any  
23 proposed subdivision. As a condition for the issuance of a  
24 permit, the county commission may require any of the following  
25 for approval of the proposed plat:

26           "(1) The filing and posting of a reasonable surety  
27 bond with the county commission by the developers of the

1 proposed subdivisions or proposed additions to guarantee the  
2 actual construction and installation are in accordance with  
3 approved plans for public streets, public roads, drainage  
4 structures, and public utilities.

5 "(2) The names and addresses of each adjoining  
6 landowner and utility subject to the notice as provided in  
7 subsection (b).

8 "(3) A permit fee, which shall not exceed  
9 twenty-five dollars (\$25).

10 "(b) No proposed plat shall be approved or  
11 disapproved by the county commission without first being  
12 reviewed by the county engineer or his or her designee.  
13 Following the review, the county engineer or his or her  
14 designee shall certify to the commission whether the proposed  
15 plat meets the county's regulations. If the proposed plat  
16 meets the regulations, it shall be approved by the commission.  
17 Should the proposed plat be determined by the county engineer  
18 to be deficient in any regard, the county engineer shall  
19 detail the deficiency to the county commission along with a  
20 recommendation that it be disapproved. Notice of the  
21 recommendation of the engineer shall be sent to the owner or  
22 developer whose name and address appears on the submitted  
23 proposed plat by registered or certified mail at least 10 days  
24 before the recommendation shall be presented to the county  
25 commission for action. A similar notice shall be mailed to the  
26 owners of land immediately adjoining the platted land as their  
27 names appear upon the plats in the office of the county tax

1        assessor and their addresses appear in the directory of the  
2        county or on the tax records of the county and to each utility  
3        affected thereby. Each utility notified in writing by the  
4        commission shall be given at least 10 days to review the  
5        proposed plat and submit a written report to the commission as  
6        to whether all provisions affecting the service to be provided  
7        by the utility are reasonable and adequate. If any utility  
8        affected by the proposed plat is not properly notified then  
9        the approval or disapproval by the county commission shall not  
10       be valid until the affected utility has been given at least 10  
11       days' notice prior to such approval or disapproval as provided  
12       by this subsection.

13                "(c) In addition to the foregoing, once the owner or  
14       developer of all proposed subdivisions or proposed additions  
15       to existing subdivisions of land situated outside the  
16       corporate limits of any municipality in the county has met all  
17       requirements of the county's regulations, he or she shall  
18       submit the final plat of the developed subdivision or addition  
19       to existing subdivision to the county engineer for signature  
20       verifying that the subdivision or addition to existing  
21       subdivision meets the county's regulations. After the final  
22       plat has been signed by the county engineer, it shall be filed  
23       for record or received for filing in the office of the judge  
24       of probate. Subject to the penalties set out in Section  
25       11-24-3, it shall be a violation of this chapter for the  
26       developer to file or to have filed any plat, deed, property

1 description, or document of property transfer without full  
2 compliance with this section.

3 "(d) Notwithstanding the provisions of subsections  
4 (a), (b), and (c), this section shall not apply to the sale,  
5 deed, or transfer of land by the owner to an immediate family  
6 member, except that, in the event that there is any sale,  
7 deed, or transfer of land by the owner or an immediate family  
8 member to someone other than an immediate family member, this  
9 chapter shall then apply to any subdivision of property as  
10 defined in subdivision (4) of subsection (a) of Section  
11 11-24-1.

12 "§11-24-3.

13 "(a) Any owner or developer failing to comply with  
14 the permitting requirement or otherwise violating this chapter  
15 or any rule or regulation made pursuant to this chapter shall  
16 be fined one thousand dollars (\$1,000) per lot that has been  
17 ~~sold, offered for sale, or transferred, or leased~~ to the  
18 public.

19 "(b) In the event that the developer or owner fails  
20 to comply with this chapter, the county commission shall have  
21 the right to enjoin action of the developer or owner by a  
22 civil action for the injunction brought in any court of  
23 competent jurisdiction or, in the event that work on the  
24 subdivision has been completed, to bring action to compel the  
25 developer or owner to comply with this chapter. In addition to  
26 injunction, the county commission may recover the penalty as

1 provided by this section in any court of competent  
2 jurisdiction.

3 "(c) The county commission may employ inspectors and  
4 may request the county license inspector to see that its rules  
5 and regulations are not violated and that the plans and  
6 specifications for the minimum size of lots, the planning and  
7 construction of public streets, public roads, and drainage  
8 structures, and the placement of public utilities are not in  
9 conflict with the rules and regulations of the county. The  
10 county commission may charge inspection fees, not to exceed  
11 actual costs, to be paid by the owners of the property  
12 inspected.

13 "(d) This chapter may be enforced by the county  
14 license inspector under Section 40-12-10, including issuing  
15 citations as provided in subsection (j) of Section 40-12-10  
16 for failure to properly obtain the permit to develop required  
17 pursuant to subsection (a) of Section 11-24-2. The license  
18 inspector may issue subsequent citations for failure to  
19 properly obtain a permit to develop if, after 30 days  
20 following the issuance of the previous citation for the same  
21 violation, the owner or developer of the subdivision has not  
22 made proper application for a permit pursuant to the  
23 requirements of this chapter. The applicable fines set out in  
24 subsection (a) shall be doubled and separately assessed  
25 against the owner or developer of the subdivision for each  
26 subsequent citation issued by the license inspector as  
27 provided herein.

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. Development includes, but is not  
22 limited to, the design work of lot layout, the construction of  
23 drainage structures, the construction of buildings or public  
24 use areas, the planning and construction of public streets and  
25 public roads, and the placement of public utilities. A  
26 subdivision does not include the construction or development

1 of roads or buildings on private property to be used for  
2 agricultural purposes.

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, the owner or agent shall  
13 forfeit and pay a penalty of one hundred dollars (\$100) for  
14 each lot or parcel so transferred or sold ~~or agreed or~~  
15 ~~negotiated to be sold~~, and the description of the lot or  
16 parcel by metes and bounds in the instrument of transfer or  
17 other document used in the process of selling or transferring  
18 shall not exempt the transaction from the penalties or from  
19 the remedies provided in this section. Notwithstanding the  
20 foregoing, nothing in this article shall impair, impede, or  
21 prohibit any person or entity from offering for reservation,  
22 sale, or lease, negotiating for sale or lease, leasing,  
23 entering into any otherwise valid and enforceable contract for  
24 the reservation, purchase, lease, or sale of any lot within  
25 any proposed subdivision prior to its approval, and no  
26 municipality shall adopt or enforce any rule, regulation, or  
27 ordinance, or take any other action that would impair, impede,

1 or prohibit any such action prior to the approval of any  
2 proposed subdivision.

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

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

15 Section 2. (a) This act shall not validate any  
16 contract entered into prior to the effective date of this act.

17 (b) This act shall apply to any contracts entered  
18 into after the effective date of this act without regard to  
19 whether an application for a subdivision or development was  
20 filed prior to the effective date of this act.

21 Section 3. This act shall become effective  
22 immediately following its passage and approval by the  
23 Governor, or its otherwise becoming law.