

1 SB141
2 127427-5
3 By Senator Brewbaker (N & P)
4 RFD: Local Legislation No. 1
5 First Read: 07-FEB-12

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to Montgomery County; to provide for the
14 installation and maintenance of an improved system of
15 recording, archiving, and retrieving documents affecting the
16 title to property and other documents recorded in the office
17 of the judge of probate; to provide for the collection and
18 disposition of a special recording fee; to provide that the
19 system shall constitute official and permanent records in
20 Montgomery County; and to repeal Act 591 of the 1965 Regular
21 Session (Acts 1965, p. 1104).

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. This act shall apply only in Montgomery
24 County. The purpose of the act is to facilitate the use of
25 public records in property transactions in Montgomery County
26 by providing for the installation of an improved system of

1 recording, archiving, and retrieving instruments and documents
2 affecting the title to real and personal property that are
3 recorded in the office of the judge of probate, and for the
4 recording, archiving, and retrieving of other instruments,
5 documents, and other uses in the discretion of the judge of
6 probate.

7 Section 2. The following words and phrases when used
8 in this act shall have the following meanings:

9 (1) GENERAL PROPERTY INSTRUMENT. A real property
10 instrument that affects the title to personal property as well
11 as real property.

12 (2) IMPROVED RECORDING SYSTEM. A system of recording
13 real property instruments and personal property instruments in
14 the probate office and, in the discretion of the judge of
15 probate, of recording other instruments and documents, which
16 system, when completed, will consist of the equipment
17 necessary and suitable to record, archive, and retrieve
18 records.

19 (3) PERSONAL PROPERTY INSTRUMENT. Any instrument or
20 document affecting the title to personal property only, as
21 distinguished from real property, that may be now or hereafter
22 required to be filed or titled for record in the probate
23 office, in accordance with the applicable requirements of the
24 laws of this state, including, without limitation, Sections
25 35-4-50 and 35-4-90, Code of Alabama 1975.

1 (4) REAL PROPERTY INSTRUMENT. Includes any
2 instrument or document affecting the title to real property
3 that may now or hereafter be filed for record in the probate
4 office pursuant to the applicable requirements of the laws of
5 this state, including, without limitation, Section 12-13-43,
6 Code of Alabama 1975, and all statutes providing for the
7 filing and recording of notices or statements of liens of any
8 kind, notices of judgments, and plats or maps showing the
9 subdivision of real estate.

10 Section 3. The judge of probate may provide for the
11 installation or enhancement, or both, and thereafter for the
12 maintenance of an improved recording, archiving, and retrieval
13 system in the Probate Office of Montgomery County. The initial
14 installation of the improved recording, archival, and
15 retrieval system shall include the following:

16 (1) The acquisition of the equipment for an improved
17 recording, archiving, and retrieving system.

18 (2) The establishment of procedures for the
19 continued recording, archiving, and retrieving of all
20 instruments and records that constitute a part of the improved
21 recording, archiving, and retrieving system.

22 (3) The installation of the improved recording,
23 archiving, and retrieving system shall be performed by a
24 person or persons, firm, or corporation engaged in the records
25 management business and experienced in setting up county
26 records and shall be supervised and inspected by a person who

1 is experienced in handling records pertaining to abstracts or
2 titles. Following installation or enhancement, or both, in the
3 county, the improved recording, archiving, and retrieving
4 system shall be thereafter maintained in the county and all
5 real property instruments, general property instruments,
6 personal property instruments, and other documents and records
7 herein provided to constitute a part of the system that may be
8 thereafter filed for record in the probate office of the
9 county shall be in accordance with the improved recording,
10 archiving, and retrieving system. Each real property
11 instrument and each personal property instrument shall be
12 operative as a record from the time of its delivery to the
13 judge of probate of the county, in accordance with existing
14 law, including, without limitation, Section 12-13-43, Code of
15 Alabama 1975.

16 Section 4. Following the installation or enhancement
17 of any system, real property instruments, personal property
18 instruments, and other documents and records to be recorded,
19 archived, and retrieved with computer-generated files or to be
20 stored and filed on either optical disk or on paper, as
21 determined by the judge of probate, shall constitute the
22 official record of instruments for the purpose of Section
23 12-13-43, Code of Alabama 1975.

24 Section 5. All laws of Alabama relating to the
25 recording of real property instruments, personal property
26 instruments, general property instruments, miscellaneous

1 instruments, and other instruments and records that may
2 constitute part of an improved recording, archiving, and
3 retrieving system installed hereunder, including, without
4 limitation, Section 12-13-43, Code of Alabama 1975, and all
5 statutes respecting the filing and recording of notices or
6 statements of liens of any kind, notices of Lis Pendens,
7 declarations of claims or exemptions, certificates of
8 judgment, or plats or maps showing subdivisions of real estate
9 that are not inconsistent with this act shall continue in
10 effect with respect to an improved recording, archiving, and
11 retrieving system installed hereunder, the recording of
12 instruments therein, and the duties of the judge of probate
13 with respect thereto.

14 Section 6. The costs of installation or enhancement
15 of any system shall be paid entirely out of the special
16 recording fees. Nothing contained in this section, however,
17 shall prohibit the county from using any part of its own funds
18 for the purpose of paying the costs of purchasing, operating,
19 or maintaining, after the initial installation, any improved
20 system installed pursuant to this act.

21 Section 7. Effective immediately after the date this
22 act becomes applicable to Montgomery County, a special
23 recording and filing fee of five dollars (\$5) shall be paid to
24 and collected by the Judge of Probate of Montgomery County,
25 with respect to each real property instrument, each personal
26 property instrument, and each Uniform Commercial Code document

1 that may be filed for record in the office of the judge of
2 probate and with respect to other instruments and documents in
3 the probate office at the discretion of the judge of probate,
4 and on and after that date, no instrument or document shall be
5 received for record in the office of the judge of probate
6 unless the special recording fee of five dollars (\$5) is paid.
7 The special recording fee shall be in addition to all other
8 fees, taxes, and charges required by law to be paid upon the
9 filing for record of any real property instrument, personal
10 property instrument, or Uniform Commercial Code document, and
11 for the recording of other instruments and documents in the
12 probate office at the discretion of the judge of probate. All
13 special recording fees collected shall be paid to a special
14 fund in the office of the judge of probate to be designated as
15 the Judge of Probate Fund. These funds shall be used at the
16 discretion of the judge of probate for an improved recording,
17 archiving, and retrieving system and other equipment,
18 maintenance, and services necessary for the improvement of the
19 office of the judge of probate. The judge of probate shall at
20 the end of each fiscal year report to the Montgomery County
21 Legislative Delegation on the use of the funds. No portion of
22 the fees shall be used for any other purposes including any
23 political purpose.

24 Section 8. The fees collected pursuant to this act
25 shall be controlled by the sole discretion of the judge of
26 probate and shall be audited by the Examiners of Public

1 Accounts. Records of the expenditures shall be open to the
2 public on a continuous basis. All costs of the audit shall be
3 paid from the fees collected.

4 Section 9. All funds held on the effective date of
5 this act in a special account in the county treasury for the
6 operation of an improved indexing and recording system in the
7 office of the judge of probate pursuant to Act 591 of the 1965
8 Regular Session (Acts 1965, p. 1104), as amended, shall be
9 transferred to the special fund of the judge of probate
10 established pursuant to this act and expended for the purposes
11 of this act as provided in this act. The indexing and
12 recording system in the office of judge of probate on the
13 effective date of this act shall continue to be operational
14 subject to any changes authorized pursuant to this act.

15 Section 10. All laws or parts of law in conflict
16 with this act are repealed. Act 591 of the 1965 Regular
17 Session (Acts 1965, p. 1104), as amended, is expressly
18 repealed.

19 Section 11. This act shall become effective on the
20 first day of the third month following its passage and
21 approval by the Governor, or its otherwise becoming law.