

1 HB162
2 125897-2
3 By Representative McMillan
4 RFD: County and Municipal Government
5 First Read: 03-MAR-11

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

This bill would provide that the county commission would be responsible for the development of subdivisions in the extraterritorial jurisdiction of the municipality if the county has adopted subdivision regulations unless an agreement is executed between the county, the municipal planning commission, and the municipality authorizing the municipal planning commission to be responsible for subdivision development.

This bill would also amend current law requiring the county engineer to approve all plats and maps before filing with the judge of probate to provide that, when the municipal planning commission is responsible for the development of subdivisions, the county engineer would certify the

1 plats and maps for filing after approval by the
2 municipal planning commission.

3
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; to provide that
17 when the municipal planning commission is responsible for the
18 development of subdivisions, the county engineer would certify
19 the plats and maps for filing once approved by the municipal
20 planning commission; and to repeal Sections 11-24-5 and
21 11-52-36, Code 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:

26 "§11-52-1.

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

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

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

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

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

12 "(5) DEVELOPMENT. Development includes, but is not
13 limited to, design work of lot layout, construction of
14 drainage structures, construction of buildings or public use
15 areas, planning and construction of public streets and public
16 roads, and placement of public utilities.

17 "~~(5)~~ (6) STREETS. Streets, avenues, boulevards,
18 roads, lanes, alleys, viaducts, and other ways.

19 "~~(6)~~ (7) SUBDIVISION. The division of a lot, tract,
20 or parcel of land into two or more lots, plats, sites, or
21 other divisions of land for the purpose, whether immediate or
22 future, of sale, of lease, or of building development. ~~Such~~
23 The term includes resubdivision and, when appropriate to the
24 context, relates to the process of subdividing or to the land
25 or territory subdivided.

26 "§11-52-30.

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

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

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

1 roads annexed into the municipality under certain
2 circumstances.

3 "(c) If a county commission has adopted subdivision
4 regulations pursuant to Chapter 24 of this title, those
5 subdivision regulations shall apply to the development of
6 subdivisions within the territorial jurisdiction of a
7 municipal planning commission and shall be regulated and
8 enforced by the county commission in the same manner and to
9 the same extent as other subdivision development governed by
10 the county's subdivision regulations. Notwithstanding the
11 foregoing, a county commission and the municipal planning
12 commission may enter into a written agreement providing that
13 the municipal planning commission shall be responsible for the
14 regulation and enforcement of the development of subdivisions
15 within the territorial jurisdiction of the municipal planning
16 commission under the terms and conditions of the agreement. In
17 order to be effective, the agreement shall be approved by a
18 resolution adopted by the county commission, the municipal
19 governing body, and the municipal planning commission of the
20 municipality respectively. If a county commission has not
21 adopted subdivision regulations pursuant to Chapter 24 of this
22 title, the municipal planning commission shall have sole
23 responsibility for the regulation and enforcement of the
24 development of subdivisions within the territorial
25 jurisdiction of the municipal planning commission.

26 "(d) If the municipal planning commission accepts
27 responsibility for the development of a subdivision within its

1 territorial jurisdiction as provided in subsection (c), the
2 county commission shall not accept any roads or bridges within
3 the subdivision for county maintenance unless the county
4 engineer certifies to the county commission that the road or
5 bridge meets the minimum road and bridge standards of the
6 county. This section shall not apply to any roads or bridges
7 which the county has accepted for maintenance prior to the
8 effective date of the act adding this subsection.

9 "(e) If the county commission is responsible for the
10 regulation and enforcement of a subdivision development within
11 the territorial jurisdiction of a municipal planning
12 commission, the recording of any map or plat related to the
13 subdivision shall be governed by Chapter 24 of this title.

14 ~~"(c)(f) No~~ If the municipal planning commission is
15 responsible for the regulation and enforcement of a
16 subdivision development within the territorial jurisdiction of
17 the municipal planning commission, no map or plat of any
18 subdivision shall be recorded, and no property shall be sold
19 referenced to ~~such~~ the map or plat, until and unless it has
20 been first submitted to and approved by the municipal planning
21 commission pursuant to Section 11-52-32 and its adopted
22 procedures, and then certified by the county engineer or, in
23 his or her designee as follows within 30 days of being
24 submitted to the county engineer: "The undersigned, as County
25 Engineer of the County _____ of Alabama, hereby certifies
26 on this _____ day of _____, 20____, that the _____
27 Planning Commission approved the within plat for the recording

1 of same in the Probate Office of _____ County, Alabama
2 ~~absence, by the acting county engineer of the county, who~~
3 ~~shall examine same for compliance with the specifications and~~
4 ~~regulations of the county commission of the county and, if it~~
5 ~~is in compliance, shall note his or her approval on the map or~~
6 ~~plat by noting thereon "approved," giving the date of approval~~
7 ~~and signing same in his or her official capacity.~~

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

1 ~~engineer or, in his or her absence, by the acting county~~
2 ~~engineer.~~

3 ~~"(e)~~ (h) Nothing in this section shall be interpreted
4 as allowing a municipal planning commission or a municipality
5 to exercise the power of eminent domain outside of its
6 corporate limits.

7 ~~"(f)~~ (i) Nothing in this section shall be interpreted
8 as allowing a municipal planning commission or a municipality
9 to levy taxes or fees outside of its corporate limits.

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

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

21 "§11-52-31.

22 ~~"The~~ Except where the county commission is
23 responsible for the regulation of subdivision regulations
24 within the territorial jurisdiction of a municipal planning
25 commission pursuant to Section 11-52-30, the municipal
26 planning commission shall adopt subdivision regulations
27 governing the subdivision of land within its jurisdiction.

1 ~~Such~~ The regulations may provide for the proper arrangement of
2 streets in relation to other existing or planned streets and
3 to the master plan, for adequate and convenient open spaces
4 for traffic, utilities, access of fire-fighting apparatus,
5 recreation, light and air and for the avoidance of congestion
6 of population, including minimum width and area of lots. ~~Such~~
7 The regulations may include provisions as to the extent to
8 which streets and other ways shall be graded and improved and
9 to which water and sewer and other utility mains, piping, or
10 other facilities shall be installed as a condition precedent
11 to the approval of the plat. The regulations or practice of
12 the municipal planning commission may provide for a tentative
13 approval of the plat previous to ~~such~~ the installation, but
14 any ~~such~~ tentative approval shall be revocable and shall not
15 be entered on the plat. In lieu of the completion of ~~such~~ the
16 improvements and utilities prior to the final approval of the
17 plat, the municipal planning commission may accept a bond with
18 surety to secure to the municipality the actual construction
19 and installation of ~~such~~ the improvements or utilities at a
20 time and according to specifications fixed by or in accordance
21 with the regulations of the municipal planning commission. The
22 municipality is hereby granted the power to enforce ~~such~~ the
23 bond by all appropriate legal and equitable remedies.

24 "All ~~such~~ regulations shall be published as provided
25 by law for the publication of ordinances, and before adoption
26 a public hearing shall be held thereon. A copy thereof shall
27 be certified by the municipal planning commission to the

1 probate judge of the county in which the municipality and
2 territory are located.

3 "§11-52-32.

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

1 appear in the directory of the municipality or on the tax
2 records of the municipality or county.

3 "(b) Every plat approved by the municipal planning
4 commission shall, by virtue of ~~such~~ the approval, be deemed to
5 be an amendment of or an addition to or a detail of the
6 municipal plan and a part thereof. Approval of a plat shall
7 not be deemed to constitute or effect an acceptance by the
8 public of any street or other open space shown upon the plat.

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

1 "(d) The municipal planning commission of any Class
2 1 city may elect no fewer than three and no more than five
3 persons who are members of ~~such~~ the municipal planning
4 commission to serve while members thereof and at the pleasure
5 of ~~such~~ the municipal planning commission as a committee to
6 approve or disapprove in the name of ~~such~~ the municipal
7 planning commission any plat presented to ~~such~~ the municipal
8 planning commission. Should any committee member so elected by
9 the municipal planning commission be unable for any reason to
10 serve at any time as a member of ~~said~~ the committee or should
11 a vacancy occur at any time on the committee, the ~~chairman~~
12 chair of the municipal planning commission shall appoint
13 another member thereof to serve as a member of the committee
14 until such time as the replaced member of the committee shall
15 resume his or her duties or until the municipal planning
16 commission shall fill ~~said~~ the vacancy by electing another of
17 its members to serve on the committee. ~~Such~~ The committee
18 shall be governed by all the provisions of this article
19 applicable to municipal planning commissions in regard to the
20 approval or disapproval of any ~~such~~ plat and to all
21 regulations adopted by ~~such~~ the municipal planning commission
22 in regard thereto not inconsistent with the provisions of this
23 article. Any plat submitted to ~~such~~ the committee shall be
24 considered as if submitted to the municipal planning
25 commission, and any approval or disapproval of any ~~such~~ plat
26 by ~~such~~ the committee shall be as if the same were approved or
27 disapproved by the municipal planning commission; provided,

1 however, that any party aggrieved by any decision of ~~such the~~
2 committee ~~may,~~ within 15 days thereafter, may appeal therefrom
3 to the full municipal planning commission of ~~such the~~
4 municipality by filing with ~~such the~~ municipal planning
5 commission a written notice of appeal specifying the decision
6 from which the appeal is taken. In the case of ~~such an~~ appeal,
7 ~~such the~~ committee shall cause a transcript of all papers and
8 documents filed with the committee in connection with the
9 matter involved in the appeal to be certified to the municipal
10 planning commission to which the appeal is taken and the
11 municipal planning commission ~~shall,~~ within 45 days from the
12 taking of ~~such the~~ appeal, in accordance with ~~such the~~
13 reasonable regulations as it may from time to time adopt,
14 shall make ~~such an~~ investigation as it deems proper and either
15 affirm the decision of ~~such the~~ committee or render ~~such the~~
16 decision as in the judgment of ~~such the~~ municipal planning
17 commission should have been rendered by ~~such the~~ committee.

18 "§11-52-33.

19 "(a) ~~Whoever, being~~ Where the regulation of a
20 subdivision development is the responsibility of the municipal
21 planning commission, if the owner or agent of the owner of any
22 land located within a subdivision, transfers or sells or
23 agrees to sell or negotiates to sell any land by reference to
24 or exhibition of or by other use of a plat of a subdivision
25 before ~~such the~~ plat has been approved by the municipal
26 planning commission and recorded or filed in the office of the
27 appropriate county probate office shall forfeit and pay a

1 penalty of ~~\$100.00~~ one hundred dollars (\$100) for each lot or
2 parcel so transferred or sold or agreed or negotiated to be
3 sold, and the description of ~~such~~ the lot or parcel by metes
4 and bounds in the instrument of transfer or other document
5 used in the process of selling or transferring shall not
6 exempt the transaction from ~~such~~ the penalties or from the
7 remedies provided in this section.

8 "(b) The municipal corporation may enjoin ~~such~~ the
9 transfer or sale or agreement by a civil action for injunction
10 brought in any court of competent jurisdiction or may recover
11 the same penalty provided in this section by a civil action in
12 any court of competent jurisdiction.

13 "(c) Where the county commission is responsible for
14 regulation of subdivision development within the territorial
15 jurisdiction of a municipal planning commission, enforcement
16 of the subdivision regulations of the county shall be as
17 provided in Chapter 24 of this title, and any penalties
18 assessed against a developer for failure to comply with the
19 subdivision regulations of the county shall be as provided
20 therein."

21 Section 2. This act shall not affect any application
22 for development or any subdivision filed prior to the
23 effective date of this act.

24 Section 3. 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 4. This act shall become effective on
2 October 1, 2011, following its passage and approval by the
3 Governor, or its otherwise becoming law.