

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

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

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

22 This bill would also amend current law  
23 requiring the county engineer to approve all plats  
24 and maps before filing with the judge of probate to  
25 provide that, when the municipal planning  
26 commission is responsible for the development of  
27 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.

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

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

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

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

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

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

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

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

"§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) (q) 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.

"(d) The municipal planning commission of any Class 1 city may elect no fewer than three and no more than five persons who are members of ~~such~~ the municipal planning commission to serve while members thereof and at the pleasure of ~~such~~ the municipal planning commission as a committee to approve or disapprove in the name of ~~such~~ the municipal planning commission any plat presented to ~~such~~ the municipal planning commission. Should any committee member so elected by the municipal planning commission be unable for any reason to serve at any time as a member of ~~said~~ the committee or should a vacancy occur at any time on the committee, the ~~chairman~~ chair of the municipal planning commission shall appoint another member thereof to serve as a member of the committee until such time as the replaced member of the committee shall resume his or her duties or until the municipal planning commission shall fill ~~said~~ the vacancy by electing another of its members to serve on the committee. ~~Such~~ The committee shall be governed by all the provisions of this article applicable to municipal planning commissions in regard to the approval or disapproval of any ~~such~~ plat and to all regulations adopted by ~~such~~ the municipal planning commission in regard thereto not inconsistent with the provisions of this article. Any plat submitted to ~~such~~ the committee shall be considered as if submitted to the municipal planning commission, and any approval or disapproval of any ~~such~~ plat by ~~such~~ the committee shall be as if the same were approved or 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.

