

1 HB739  
2 118766-2  
3 By Representatives McMillan, Davis, Shiver, Faust and Baker  
4 (A) (N & P)  
5 RFD: Baldwin County Legislation  
6 First Read: 23-MAR-10

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9 A BILL  
10 TO BE ENTITLED  
11 AN ACT  
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13 Relating to Baldwin County; to amend Sections  
14 45-2-261.01, 45-2-261.02, 45-2-261.07, 45-2-261.10,  
15 45-2-261.13, 45-2-261.17, and 45-2-261.40 of the Code of  
16 Alabama 1975, relating to the county planning and zoning  
17 commission, to further provide for the members, jurisdiction  
18 of the commission, procedure for the implementation of  
19 planning and zoning, provisions for appeals from a planning  
20 district board of adjustment to the county commission, and  
21 provisions regarding conflicts of authority and setbacks.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Sections 45-2-261.01, 45-2-261.02,  
24 45-2-261.07, 45-2-261.10, 45-2-261.13, 45-2-261.17, and  
25 45-2-261.40 of the Code of Alabama 1975, are amended to read  
26 as follows:

27 "§45-2-261.01.

1                   ~~"Commencing April 26, 2006, the~~ The planning  
2                   commission shall be composed of ~~those persons serving as~~  
3                   ~~members and officers of the Planning Commission of Baldwin~~  
4                   ~~County on April 26, 2006. Their terms on the planning~~  
5                   ~~commission shall run concurrently with their existing terms on~~  
6                   ~~the county planning commission. A minimum of eight members of~~  
7                   ~~the planning commission shall be qualified electors from the~~  
8                   ~~unincorporated areas of Baldwin County~~ nine regular members,  
9                   each of whom shall be a qualified elector and an actual  
10                   resident of the county. One and only one regular member of the  
11                   planning commission may be a qualified elector of the county  
12                   who resides in the corporate limits of a municipality in the  
13                   county. All regular members shall be appointed by the Baldwin  
14                   County Commission for a term of four years. Upon the  
15                   affirmative vote of a majority of the qualified electors in a  
16                   district election held pursuant to Section 45-2-261.07, the  
17                   membership of the planning commission shall be increased by  
18                   appointment by the county commission of a qualified elector  
19                   from that district for a temporary one-time term of three  
20                   years. In the event of any vacancy on the planning commission,  
21                   such vacancy shall be filled by appointment of the Baldwin  
22                   County Commission. The Baldwin County Commission may remove  
23                   any member for cause upon written charges and after a public  
24                   hearing. All members shall serve without compensation, and no  
25                   member shall be a county officer or employee; however,  
26                   reasonable and necessary expenses of the members of the

1 planning commission shall be paid from the General Fund of  
2 Baldwin County.

3 "§45-2-261.02.

4 "The jurisdiction of the planning commission for  
5 planning and zoning by district pursuant to Section  
6 45-2-261.07 shall apply to all unincorporated areas of Baldwin  
7 County. The planning commission shall not have authority over  
8 removal of natural resources growing on, placed on, or  
9 naturally existing on or under private lands or properties. ~~In~~  
10 ~~any district which has adopted a zoning ordinance, undeveloped~~  
11 ~~land or land zoned or used for agricultural purposes or timber~~  
12 ~~growing shall automatically be rezoned for single family use~~  
13 ~~upon the request by the owner.~~ Provided further, that any  
14 owner of record of real property upon the date of the adoption  
15 by the Baldwin County Commission of the zoning ordinance for  
16 the district in which the property is located shall  
17 automatically obtain a variance, if needed, for a single  
18 family dwelling notwithstanding the type of dwelling to be  
19 placed or constructed on the property. Notwithstanding any  
20 provisions, rules, or regulations to the contrary, for the  
21 purposes of filing any application required by the ordinances  
22 and zoning regulations promulgated hereunder, any owner of  
23 record or holder of any interest in the real property made the  
24 subject of such application shall have standing and be  
25 authorized and entitled to file such application and request  
26 action authorized by such ordinances and zoning regulations in  
27 order to exercise his or her rights in the subject property.

1 The Baldwin County Commission may enter into agreements with  
2 municipalities for planning purposes with the extraterritorial  
3 planning jurisdiction of the municipalities. The county  
4 commission may designate the planning commission to administer  
5 subdivision regulations adopted pursuant to the provisions of  
6 Sections 11-19-1 to 11-19-24, inclusive, and 11-24-1 to  
7 11-24-7, inclusive, and Act 1094 of the 1973 Regular Session  
8 (Acts 1973, p. 1860).

9 "§45-2-261.07.

10 "The Baldwin County Commission shall not exercise  
11 its planning and zoning powers and jurisdiction in any  
12 district established hereunder until the majority of the  
13 qualified electors of the district voting in an election shall  
14 have voted their desire to come within the planning and zoning  
15 authority of the Baldwin County Commission. The election shall  
16 be held if 10 percent of the qualified electors in any  
17 district submit a written petition to the county commission  
18 expressing a desire to be subject to the planning and zoning  
19 jurisdiction of the Baldwin County Commission under authority  
20 of this subpart ~~or upon a resolution of the county commission.~~  
21 For the purposes of the establishment of districts after the  
22 effective date of the act amending this section, a district  
23 shall correspond to a voting precinct or precincts in the  
24 county unless the county governing body agrees that the use of  
25 voting precinct boundaries is not feasible. A party or parties  
26 seeking to file a petition shall notify the county governing  
27 body in writing that the parties will petition for the

1 formation of a district and the proposed boundaries of the  
2 district. The judge of probate within 15 days shall give a  
3 preliminary estimate of the number of signatures needed to  
4 call the election. The county governing body shall notify the  
5 principal party in writing within 30 days of written  
6 notification by petitioners of intent to request a referendum,  
7 by U.S. mail, return receipt requested, that the proposed  
8 district is acceptable for planning, zoning, and voting  
9 purposes and shall furnish forms to the petitioner for use in  
10 seeking the number of signatures required to call an election.  
11 The parties shall have 120 days thereafter to obtain the  
12 necessary signatures and file the petition. The county  
13 commission and the Judge of Probate of Baldwin County shall  
14 certify or reject the accuracy of the petition no later than  
15 45 days after receiving the petition, or in the case of an  
16 election to be held by resolution of the county commission,  
17 the county commission shall certify the adoption of its  
18 resolution to the judge of probate. If the number of  
19 signatures is not sufficient, the parties shall have another  
20 60 days to complete the petition and have it certified. If the  
21 petition is not certified, a petition for the proposed  
22 district may not be refiled for one year after the final  
23 denial of certification. Upon certification, the county  
24 commission shall then instruct the Judge of Probate of Baldwin  
25 County to provide for an election within that district no  
26 later than 90 days after the certification. Notice of the  
27 election shall be published four times during the 30-day

1 period immediately preceding the date of the election in a  
2 newspaper of general circulation in Baldwin County. In  
3 addition, the county commission shall notify by U.S. mail each  
4 elector in a district of the election and the process to  
5 obtain additional information. The notification shall state  
6 the date of the election and the polling place or places for  
7 voting. The judge of probate shall conduct the election. All  
8 costs for the notification and election shall be paid from the  
9 General Fund of Baldwin County. If a majority of the qualified  
10 electors in a district vote in the negative in the election,  
11 then the district shall not be subject to the zoning and  
12 planning jurisdiction of the Baldwin County Commission, and  
13 the qualified electors of the district shall not be eligible  
14 to petition for another election until one year from the date  
15 of the last election. If a majority of the qualified electors  
16 in a district vote in the affirmative, then the district shall  
17 be subject to the zoning and planning jurisdiction of the  
18 Baldwin County Commission.

19 "§45-2-261.10.

20 "The Baldwin County Commission shall provide for the  
21 appointment of boards of adjustment and the regulations and  
22 ordinances adopted pursuant to the authority of this subpart  
23 shall provide that the boards of adjustment, in appropriate  
24 cases and subject to appropriate conditions and safeguards,  
25 may make special exceptions to the terms of the ordinances and  
26 regulations in harmony with their general purposes and  
27 interests and in accordance with general or specific rules

1       therein contained. Four district boards of adjustment shall be  
2       appointed by the Baldwin County Commission with the same  
3       boundaries as the county commission districts as currently  
4       provided for by law on April 26, 2006. If a planning district  
5       is in more than one commission district, the board of  
6       adjustment for the planning district shall be the board of  
7       adjustment for the county commission district which contains  
8       the greatest part of the planning district. Each board of  
9       adjustment shall consist of not less than three and not more  
10      than the same number of regular members as the number of  
11      planning districts within the jurisdiction of a board of  
12      adjustment. Each member of a board of adjustment shall be a  
13      qualified elector of a planning district within the territory  
14      of the respective board of adjustment. The board of adjustment  
15      for each county commission district shall be composed of at  
16      least one member from each planning district and shall reflect  
17      as nearly as practical the diversity of land use in the  
18      commission district. The initial appointment of members to  
19      boards of adjustment and the alternates provided by Act  
20      2006-609 shall be from nominations by the boards of adjustment  
21      of the local planning districts on April 26, 2006. ~~No more~~  
22      ~~than 25 percent of the members~~ Not more than one member of a  
23      board of adjustment shall be directly engaged in real estate  
24      sales, development, or construction or any directly related  
25      field. The county commission shall consider the size of the  
26      territory which has formed planning districts under a board of  
27      adjustment district in determining the size of a board of



1 adjustment. Each regular member shall be appointed for a term  
2 of three years in such a manner to serve staggered terms. A  
3 regular member shall continue service until a successor is  
4 duly appointed. The members of each board of adjustment shall  
5 elect a chair. In addition to the regular members provided for  
6 in this section, one alternate member for each regular member  
7 shall be appointed to serve on each board of adjustment only  
8 in the absence of the regular member for the place for which  
9 he or she was appointed an alternate and while serving shall  
10 have and exercise authority of a regular member. The alternate  
11 member shall have the same qualifications as a regular member  
12 and shall serve for a term concurrent with the regular member  
13 for the district. Members of each board of adjustment may be  
14 removed for cause by the Baldwin County Commission upon  
15 written charges and after a public hearing. Vacancies shall be  
16 filled for the unexpired term of any member whose term becomes  
17 vacant. Each board of adjustment for each district shall adopt  
18 bylaws in accordance with the provisions of any ordinance or  
19 regulation promulgated pursuant to this subpart. Meetings of  
20 each board of adjustment shall be held at the call of the  
21 chair of the board and at such other times as each board may  
22 determine, provided that no board of adjustment shall meet  
23 less than once every three months on a day to be determined by  
24 the board. The chair, or in his or her absence, the acting  
25 chair may administer oaths and compel the attendance of  
26 witnesses. All meetings of the boards of adjustment shall be  
27 open to the public. The board shall keep minutes of its

1 proceedings showing the vote of each member upon each  
2 question, or, if absent or failing to vote, indicating that  
3 fact, and shall keep records of its examinations and of other  
4 official actions, all of which shall immediately be filed in  
5 the office of the board and shall be a public record.

6 "§45-2-261.13.

7 "Any party aggrieved by a final judgment or decision  
8 of a board of adjustment ~~may~~, within 15 days thereafter, may  
9 appeal therefrom to the county commission. Any party aggrieved  
10 by a final judgment or decision of the county commission  
11 within 15 days thereafter, may appeal therefrom to the Circuit  
12 Court of Baldwin County, Alabama, by filing with the circuit  
13 court and the ~~board of adjustment~~ county commission a written  
14 notice of appeal specifying the judgment or decision from  
15 which the appeal is taken. In case of ~~the~~ an appeal to circuit  
16 court, the ~~board of adjustment~~ county commission shall cause a  
17 transcript of the proceedings and the action to be certified  
18 to the court to which the appeal is taken.

19 "§45-2-261.17.

20 "The authority of the Baldwin County Commission  
21 under this subpart shall not conflict with present or future  
22 regulations or policies of the Alabama Department of Health.  
23 No provision of this subpart shall infringe upon the existing  
24 authority of the Baldwin County ~~Planning~~ Commission to  
25 regulate the development of subdivisions under Act 1094 of the  
26 1973 Regular Session (Acts 1973, p. 1860), and any amendments  
27 thereto, or any additional power or authority granted to the

1 Baldwin County Commission by local legislative act.  
2 Notwithstanding any authority otherwise conferred by this  
3 subpart or any local act applicable to Baldwin County, after a  
4 subdivision has been approved in accordance with the  
5 subdivision regulations applicable to the subdivision at the  
6 time of approval, the Baldwin County Commission and the  
7 Baldwin County Planning Commission shall have no authority to  
8 impose, by amendment to any subdivision regulations, zoning  
9 regulations, or otherwise, any new or additional front, side,  
10 rear, or wetland setback requirements on any lot contained  
11 within a previously approved subdivision which would increase  
12 the setback requirements or impose a more restrictive setback  
13 requirement on the use of the lot. All subdivisions and lots  
14 approved in accordance with the applicable subdivision  
15 regulations prior to the date the Baldwin County zoning  
16 regulations become applicable to the subdivision or lot, or  
17 prior to the amendment of any applicable zoning regulations,  
18 shall not be subject to any new or additional front, side,  
19 rear, or wetland setback requirements which would increase the  
20 setback requirements or impose a more restrictive setback  
21 requirement on the use of the lot, and the lot shall not be  
22 deemed a non-conforming lot for the purposes of any zoning or  
23 subdivision regulations and may be used and improved without  
24 regard to the new or additional requirements and without any  
25 limitation applicable thereto based on any non-conformity with  
26 subsequently enacted regulations. No provision of this subpart  
27 shall affect any existing statute or regulation promulgated

1 pursuant to any law creating historic or preservation  
2 districts within Baldwin County; however, historic or  
3 preservation districts are subject to the provisions of this  
4 subpart.

5 §45-2-261.40.

6 "(a) The Baldwin County Commission may appoint real  
7 estate agents or other persons in the real estate field to the  
8 Baldwin County Planning Commission. The appointed real estate  
9 agents or other persons in the real estate field to the  
10 Baldwin County Planning Commission shall not exceed ~~25 percent~~  
11 ~~of the composition~~ three members of such commission.

12 "(b) The operation of this section shall be  
13 retroactive to January 1, 1976."

14 Section 2. All laws or parts of laws which conflict  
15 with this act are repealed.

16 Section 3. This act shall become effective on June  
17 1, 2010, following its passage and approval by the Governor,  
18 or its otherwise becoming law.