

1 SB236  
2 135408-8  
3 By Senators Sanford and Orr  
4 RFD: Governmental Affairs  
5 First Read: 08-FEB-12

2  
3  
4 ENGROSSED

5  
6  
7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To amend Sections 11-52-1, 11-52-30, 11-52-31,  
12 11-52-32, and 11-52-33, Code of Alabama 1975, to provide for  
13 the county commission to be responsible for the development of  
14 subdivisions in the extraterritorial jurisdiction of a  
15 municipal planning commission if the county has adopted  
16 subdivision regulations unless an agreement is executed  
17 between the county, the municipal planning commission, and the  
18 municipality to provide for the municipal planning commission  
19 to be responsible for subdivision development or unless the  
20 municipality and the municipal planning commission under  
21 certain conditions specifically vote to override the county's  
22 exercise of jurisdiction; to provide that when the municipal  
23 planning commission is responsible for the development of  
24 subdivisions, the county engineer would certify the plats and  
25 maps for filing once approved by the municipal planning

1 commission; and to repeal Sections 11-24-5 and 11-52-36, Code  
2 of Alabama 1975.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 11-52-1, 11-52-30, 11-52-31,  
5 11-52-32, and 11-52-33, Code of Alabama 1975, are amended to  
6 read as follows:

7 "§11-52-1.

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

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

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

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

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

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

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

1 context, relates to the process of subdividing or to the land  
2 or territory subdivided.

3 "§11-52-30.

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

1 county may establish minimum specifications and regulations  
2 governing the lay-out, grading, and paving of all streets,  
3 avenues, and alleys and the construction or installation of  
4 all water, sewer, or drainage pipes or lines in any  
5 subdivision lying wholly or partly in areas outside the  
6 corporate limits of any municipality in the counties and  
7 relating to subdivisions lying within the corporate limits of  
8 any municipality in the counties which has declined or failed  
9 to exercise zoning jurisdiction and control as provided in  
10 this section.

11 "(b) A municipal planning commission, by properly  
12 adopted regulation, may provide that the territorial  
13 jurisdiction of the municipal planning commission ~~over the~~  
14 ~~subdivision of land~~ shall include all land lying within ~~an~~  
15 ~~area~~ a radius less than the five miles permitted by this  
16 section. The regulation shall establish the territory within  
17 which the municipal planning commission will exercise  
18 jurisdiction ~~over the subdivision of land~~ to a boundary line  
19 equidistant from the corporate limits of the municipality,  
20 except, that in the case of any nonmunicipal land lying within  
21 the territorial jurisdiction of more than one municipality  
22 with a municipal planning commission exercising jurisdiction  
23 ~~over the subdivision of land~~ outside the municipal corporate  
24 limits, the jurisdiction of each municipal planning commission  
25 shall terminate at a boundary line equidistant from the  
26 respective corporate limits of each municipality. A copy of

1 the resolution altering the territorial jurisdiction shall be  
2 forwarded to the county commission within five days of  
3 adoption. Additionally, nothing in this subsection shall be  
4 construed to alter the provisions of Article 5 of Chapter 49,  
5 which require a municipality to assume responsibility for  
6 roads annexed into the municipality under certain  
7 circumstances.

8 "(c) (1) If a county commission has adopted  
9 subdivision regulations pursuant to Chapter 24 of this title,  
10 those subdivision regulations shall apply to the development  
11 of subdivisions within the territorial jurisdiction of a  
12 municipal planning commission outside the corporate limits of  
13 a municipality and shall be regulated and enforced by the  
14 county commission in the same manner and to the same extent as  
15 other subdivision development governed by the county's  
16 subdivision regulations. Notwithstanding the foregoing, a  
17 county commission and the municipal planning commission may  
18 enter into a written agreement providing that the municipal  
19 planning commission shall be responsible for the regulation  
20 and enforcement of the development of subdivisions within the  
21 territorial jurisdiction of the municipal planning commission  
22 under the terms and conditions of the agreement. In order to  
23 be effective, the agreement shall be approved by a resolution  
24 adopted by the county commission, the municipal governing  
25 body, and the municipal planning commission of the  
26 municipality, respectively.

1           "(2) In those counties in which the county  
2           commission has adopted subdivision regulations pursuant to  
3           Chapter 24 of this title and the municipal planning commission  
4           has been unsuccessful in reaching an agreement to exercise its  
5           jurisdiction as provided in subsection (1), the governing body  
6           of the municipality and the municipal planning commission may  
7           override the county's enforcement of the regulation of  
8           subdivisions within the planning jurisdiction by fully  
9           complying with all of the following requirements:

10           "a. The municipal governing body and the municipal  
11           planning commission shall each adopt separate resolutions  
12           expressing intent to exercise jurisdiction over the  
13           construction of subdivisions initiated after the effective  
14           date of the resolutions, despite the county commission's  
15           objections to the exercise of that authority.

16           "b. The municipal planning commission shall at all  
17           times thereafter employ or contract with a licensed  
18           professional engineer who shall notify the county commission  
19           of the initiation of subdivisions; conduct inspections of the  
20           construction of the subdivision; and shall certify, in  
21           writing, the compliance with the subdivision regulations  
22           governing the development of the subdivision.

23           "c. The county commission shall retain the authority  
24           to require a performance and maintenance bond from the  
25           developer, consistent with the requirements for the bonds in

1 the county subdivision regulations, which shall be payable to  
2 the county.

3 "d. The county commission shall retain the authority  
4 to execute on the bond to make necessary improvements to the  
5 public roads and drainage structures of the subdivision while  
6 it remains in the unincorporated area of the county.

7 "e. The municipal governing body and the municipal  
8 planning commission exercising the authority granted in this  
9 subsection may thereafter withdraw their exercise of  
10 jurisdiction over future subdivisions located outside the  
11 corporate limits of the municipality after not less than six  
12 months' notice to the county commission. After withdrawal, the  
13 municipal planning commission of the municipality may not  
14 reinstate the authority granted in this subsection for 24  
15 months after the effective date of its withdrawal.

16 "(d) If a county commission has not adopted  
17 subdivision regulations pursuant to Chapter 24 of this title,  
18 the municipal planning commission shall have sole jurisdiction  
19 for the regulation and enforcement of the development of  
20 subdivisions within the territorial jurisdiction of the  
21 municipal planning commission.

22 "(e) If the municipal planning commission accepts  
23 responsibility for the development of a subdivision within its  
24 territorial jurisdiction as provided in subsection (c), the  
25 county commission shall not accept any roads or bridges within  
26 the subdivision for county maintenance unless the county

1 engineer certifies to the county commission that the road or  
2 bridge meets the minimum road and bridge standards of the  
3 county. This section shall not apply to any roads or bridges  
4 which the county has accepted for maintenance prior to the  
5 effective date of the act adding this subsection.

6 "(f)(1) If the county commission is responsible for  
7 the regulation and enforcement of a subdivision development  
8 within the territorial jurisdiction of a municipal planning  
9 commission outside the corporate limits of a municipality, the  
10 recording of any map or plat related to the subdivision shall  
11 be governed by Chapter 24 of this title.

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

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

8 ~~"(d)(h) 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)(i) 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)(j) 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 ~~"(k) 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 ~~"(l) 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

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

25 "All ~~such~~ regulations shall be published as provided  
26 by law for the publication of ordinances, and before adoption

1 a public hearing shall be held thereon. A copy thereof shall  
2 be certified by the municipal planning commission to the  
3 probate judge of the county in which the municipality and  
4 territory are located.

5 "§11-52-32.

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

1 adjoining the platted land as their names appear upon the  
2 plats in the county tax assessor's office and their addresses  
3 appear in the directory of the municipality or on the tax  
4 records of the municipality or county.

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

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

1 power of amendment or repeal as though set out as a part of  
2 the zoning ordinance or map of the municipality.

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

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

21 "§11-52-33.

22 "(a) ~~Whoever, being~~ Where the regulation of a  
23 subdivision development is the responsibility of the municipal  
24 planning commission, if the owner or agent of the owner of any  
25 land located within a subdivision, transfers or sells or  
26 agrees to sell or negotiates to sell any land by reference to

1 or exhibition of or by other use of a plat of a subdivision  
2 before ~~such~~ the plat has been approved by the municipal  
3 planning commission and recorded or filed in the office of the  
4 appropriate county probate office shall forfeit and pay a  
5 penalty of ~~\$100.00~~ one hundred dollars (\$100) for each lot or  
6 parcel so transferred or sold or agreed or negotiated to be  
7 sold, and the description of ~~such~~ the lot or parcel by metes  
8 and bounds in the instrument of transfer or other document  
9 used in the process of selling or transferring shall not  
10 exempt the transaction from ~~such~~ the penalties or from the  
11 remedies provided in this section.

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

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

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

4           Additionally, in the event the municipal planning  
5 commission lawfully assumes the authority to exercise control  
6 over the development of subdivisions in an area where the  
7 county commission has previously exercised regulation of  
8 subdivision development, the municipal planning commission's  
9 regulatory authority shall not apply to a subdivision  
10 development which is already being regulated and enforced by  
11 the county commission pursuant to an application for plat  
12 approval submitted to the county commission by the developer  
13 prior to the date on which the municipal planning commission  
14 lawfully assumed responsibility for the development of  
15 subdivisions pursuant to this chapter.

16           Section 3. Nothing contained in this act requires a  
17 municipality to assume responsibility for roads or  
18 infrastructure in subdivisions approved by the city engineer  
19 outside the municipal corporate limits or alters, amends, or  
20 supersedes the requirements relating to responsibility for  
21 road and bridge maintenance pursuant to Section 11-49-80, Code  
22 of Alabama 1975.

23           Nothing contained in this Act shall be construed to  
24 effect or limit the authority conferred by Sections 37-4-130  
25 and 37-4-131, Code of Alabama 1975.

1                   Section 4. All laws or parts of laws which conflict  
2 with this act are repealed. Sections 11-24-5 and 11-52-36,  
3 Code of Alabama 1975, are specifically repealed.

4                   Section 5. This act shall become effective on  
5 October 1, 2012, following its passage and approval by the  
6 Governor, or its otherwise becoming law.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
  
11  
12  
13  
14  
15  
16  
17  
18

Senate

Read for the first time and referred to the Senate  
committee on Governmental Affairs..... 08-FEB-12

Read for the second time and placed on the calen-  
dar 2 amendments..... 21-FEB-12

Read for the third time and passed as amended .... 22-MAR-12

Yeas 23  
Nays 0  
Abstaining 1

Patrick Harris  
Secretary