

1 SB236  
2 135408-9  
3 By Senators Sanford and Orr  
4 RFD: Governmental Affairs  
5 First Read: 08-FEB-12

ACT NO. 2012- 297



1 SB236

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3  
4 ENROLLED, An Act,

5 To amend Sections 11-52-1, 11-52-30, 11-52-31,  
6 11-52-32, and 11-52-33, Code of Alabama 1975, to provide for  
7 the county commission to be responsible for the development of  
8 subdivisions in the extraterritorial jurisdiction of a  
9 municipal planning commission if the county has adopted  
10 subdivision regulations unless an agreement is executed  
11 between the county, the municipal planning commission, and the  
12 municipality to provide for the municipal planning commission  
13 to be responsible for subdivision development or unless the  
14 municipality and the municipal planning commission under  
15 certain conditions specifically vote to override the county's  
16 exercise of jurisdiction; to provide that when the municipal  
17 planning commission is responsible for the development of  
18 subdivisions, the county engineer would certify the plats and  
19 maps for filing once approved by the municipal planning  
20 commission; and to repeal Sections 11-24-5 and 11-52-36, Code  
21 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:

1           "§11-52-1.

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

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

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

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

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

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

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

22           "§11-52-30.

23           "(a) Except as otherwise provided herein, the  
24 territorial jurisdiction of any municipal planning commission  
25 shall include all land located in the municipality and all

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

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

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

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

20           "(2) In those counties in which the county  
21 commission has adopted subdivision regulations pursuant to  
22 Chapter 24 of this title and the municipal planning commission  
23 has been unsuccessful in reaching an agreement to exercise its  
24 jurisdiction as provided in subsection (1), the governing body  
25 of the municipality and the municipal planning commission may

1       override the county's enforcement of the regulation of  
2       subdivisions within the planning jurisdiction by fully  
3       complying with all of the following requirements:

4               "a. The municipal governing body and the municipal  
5       planning commission shall each adopt separate resolutions  
6       expressing intent to exercise jurisdiction over the  
7       construction of subdivisions initiated after the effective  
8       date of the resolutions, despite the county commission's  
9       objections to the exercise of that authority.

10              "b. The municipal planning commission shall at all  
11       times thereafter employ or contract with a licensed  
12       professional engineer who shall notify the county commission  
13       of the initiation of subdivisions; conduct inspections of the  
14       construction of the subdivision; and shall certify, in  
15       writing, the compliance with the subdivision regulations  
16       governing the development of the subdivision.

17              "c. The county commission shall retain the authority  
18       to require a performance and maintenance bond from the  
19       developer, consistent with the requirements for the bonds in  
20       the county subdivision regulations, which shall be payable to  
21       the county.

22              "d. The county commission shall retain the authority  
23       to execute on the bond to make necessary improvements to the  
24       public roads and drainage structures of the subdivision while  
25       it remains in the unincorporated area of the county.

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

10            "(d) If a county commission has not adopted  
11 subdivision regulations pursuant to Chapter 24 of this title,  
12 the municipal planning commission shall have sole jurisdiction  
13 for the regulation and enforcement of the development of  
14 subdivisions within the territorial jurisdiction of the  
15 municipal planning commission.

16            "(e) If the municipal planning commission accepts  
17 responsibility for the development of a subdivision within its  
18 territorial jurisdiction as provided in subsection (c), the  
19 county commission shall not accept any roads or bridges within  
20 the subdivision for county maintenance unless the county  
21 engineer certifies to the county commission that the road or  
22 bridge meets the minimum road and bridge standards of the  
23 county. This section shall not apply to any roads or bridges  
24 which the county has accepted for maintenance prior to the  
25 effective date of the act adding this subsection.

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

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

23           "(h) Approval by the county engineer pursuant to  
24 this subsection shall not constitute approval in lieu of or on  
25 behalf of any municipality with respect to subdivision

1 development regulated and enforced by the municipal planning  
2 commission, wherein all maps or plats must be first submitted  
3 to and approved by the municipal planning commission or other  
4 appropriate municipal agency exercising jurisdiction over the  
5 subdivision.

6 "(i) Nothing in this section shall be interpreted as  
7 allowing a municipal planning commission or a municipality to  
8 exercise the power of eminent domain outside of its corporate  
9 limits.

10 "(j) Nothing in this section shall be interpreted as  
11 allowing a municipal planning commission or a municipality to  
12 levy taxes or fees outside of its corporate limits.

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

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

24 "§11-52-31.

1           "Except where the county commission is responsible  
2           for the regulation of subdivision regulations within the  
3           territorial jurisdiction of a municipal planning commission  
4           pursuant to Section 11-52-30, the municipal planning  
5           commission shall adopt subdivision regulations governing the  
6           subdivision of land within its jurisdiction. The regulations  
7           may provide for the proper arrangement of streets in relation  
8           to other existing or planned streets and to the master plan,  
9           for adequate and convenient open spaces for traffic,  
10          utilities, access of fire-fighting apparatus, recreation,  
11          light and air and for the avoidance of congestion of  
12          population, including minimum width and area of lots. The  
13          regulations may include provisions as to the extent to which  
14          streets and other ways shall be graded and improved and to  
15          which water and sewer and other utility mains, piping, or  
16          other facilities shall be installed as a condition precedent  
17          to the approval of the plat. The regulations or practice of  
18          the municipal planning commission may provide for a tentative  
19          approval of the plat previous to the installation, but any  
20          tentative approval shall be revocable and shall not be entered  
21          on the plat. In lieu of the completion of the improvements and  
22          utilities prior to the final approval of the plat, the  
23          municipal planning commission may accept a bond with surety to  
24          secure to the municipality the actual construction and  
25          installation of the improvements or utilities at a time and

1 according to specifications fixed by or in accordance with the  
2 regulations of the municipal planning commission. The  
3 municipality is hereby granted the power to enforce the bond  
4 by all appropriate legal and equitable remedies.

5 "All regulations shall be published as provided by  
6 law for the publication of ordinances, and before adoption a  
7 public hearing shall be held thereon. A copy thereof shall be  
8 certified by the municipal planning commission to the probate  
9 judge of the county in which the municipality and territory  
10 are located.

11 "§11-52-32.

12 "(a) Except where the development of a subdivision  
13 within the territorial jurisdiction of a municipal planning  
14 commission is regulated by the county commission pursuant to  
15 Section 11-52-30, the municipal planning commission shall  
16 approve or disapprove a plat within 30 days after the  
17 submission thereof to it; otherwise, the plat shall be deemed  
18 to have been approved, and a certificate to that effect shall  
19 be issued by the municipal planning commission on demand;  
20 provided, however, that the applicant for the municipal  
21 planning commission's approval may waive this requirement and  
22 consent to an extension of such period. The ground of  
23 disapproval of any plat shall be stated upon the records of  
24 the municipal planning commission. Any plat submitted to the  
25 municipal planning commission shall contain the name and

1 address of a person to whom notice of a hearing shall be sent,  
2 and no plat shall be acted on by the municipal planning  
3 commission without affording a hearing thereon. Notice shall  
4 be sent to the address by registered or certified mail of the  
5 time and place of the hearing not less than five days before  
6 the date fixed therefor. Similar notice shall be mailed to the  
7 owners of land immediately adjoining the platted land as their  
8 names appear upon the plats in the county tax assessor's  
9 office and their addresses appear in the directory of the  
10 municipality or on the tax records of the municipality or  
11 county.

12 "(b) Every plat approved by the municipal planning  
13 commission shall, by virtue of the approval, be deemed to be  
14 an amendment of or an addition to or a detail of the municipal  
15 plan and a part thereof. Approval of a plat shall not be  
16 deemed to constitute or effect an acceptance by the public of  
17 any street or other open space shown upon the plat.

18 "(c) The municipal planning commission, from time to  
19 time, may recommend to the governing body of the municipality  
20 amendments of the zoning ordinance or map or additions thereto  
21 to conform to the municipal planning commission's  
22 recommendations for the zoning regulation of the territory  
23 comprised within approved subdivisions. The municipal planning  
24 commission shall have the power to agree with the application  
25 upon use, height, area, or bulk requirements or restrictions

1 governing buildings and premises within the subdivision,  
2 provided the requirements or restrictions do not authorize the  
3 violation of the then effective zoning ordinance of the  
4 municipality. The requirements or restrictions shall be stated  
5 upon the plat prior to the approval and recording thereof and  
6 shall have the same force of law and be enforceable in the  
7 same manner and with the same sanctions and penalties and  
8 subject to the same power of amendment or repeal as though set  
9 out as a part of the zoning ordinance or map of the  
10 municipality.

11 " (d) The municipal planning commission of any Class  
12 1 city may elect no fewer than three and no more than five  
13 persons who are members of the municipal planning commission  
14 to serve while members thereof and at the pleasure of the  
15 municipal planning commission as a committee to approve or  
16 disapprove in the name of the municipal planning commission  
17 any plat presented to the municipal planning commission.  
18 Should any committee member so elected by the municipal  
19 planning commission be unable for any reason to serve at any  
20 time as a member of the committee or should a vacancy occur at  
21 any time on the committee, the chair of the municipal planning  
22 commission shall appoint another member thereof to serve as a  
23 member of the committee until such time as the replaced member  
24 of the committee shall resume his or her duties or until the  
25 municipal planning commission shall fill the vacancy by

1 electing another of its members to serve on the committee. The  
2 committee shall be governed by all the provisions of this  
3 article applicable to municipal planning commissions in regard  
4 to the approval or disapproval of any plat and to all  
5 regulations adopted by the municipal planning commission in  
6 regard thereto not inconsistent with the provisions of this  
7 article. Any plat submitted to the committee shall be  
8 considered as if submitted to the municipal planning  
9 commission, and any approval or disapproval of any plat by the  
10 committee shall be as if the same were approved or disapproved  
11 by the municipal planning commission; provided, however, that  
12 any party aggrieved by any decision of the committee, within  
13 15 days thereafter, may appeal therefrom to the full municipal  
14 planning commission of the municipality by filing with the  
15 municipal planning commission a written notice of appeal  
16 specifying the decision from which the appeal is taken. In the  
17 case of an appeal, the committee shall cause a transcript of  
18 all papers and documents filed with the committee in  
19 connection with the matter involved in the appeal to be  
20 certified to the municipal planning commission to which the  
21 appeal is taken and the municipal planning commission, within  
22 45 days from the taking of the appeal, in accordance with the  
23 reasonable regulations as it may from time to time adopt,  
24 shall make an investigation as it deems proper and either  
25 affirm the decision of the committee or render the decision as

1 in the judgment of the municipal planning commission should  
2 have been rendered by the committee.

3 "§11-52-33.

4 "(a) Where the regulation of a subdivision  
5 development is the responsibility of the municipal planning  
6 commission, if the owner or agent of the owner of any land  
7 located within a subdivision, transfers or sells or agrees to  
8 sell or negotiates to sell any land by reference to or  
9 exhibition of or by other use of a plat of a subdivision  
10 before the plat has been approved by the municipal planning  
11 commission and recorded or filed in the office of the  
12 appropriate county probate office shall forfeit and pay a  
13 penalty of one hundred dollars (\$100) for each lot or parcel  
14 so transferred or sold or agreed or negotiated to be sold, and  
15 the description of the lot or parcel by metes and bounds in  
16 the instrument of transfer or other document used in the  
17 process of selling or transferring shall not exempt the  
18 transaction from the penalties or from the remedies provided  
19 in this section.

20 "(b) The municipal corporation may enjoin the  
21 transfer or sale or agreement by a civil action for injunction  
22 brought in any court of competent jurisdiction or may recover  
23 the same penalty provided in this section by a civil action in  
24 any court of competent jurisdiction.

1           "(c) Where the county commission is responsible for  
2 regulation of subdivision development within the territorial  
3 jurisdiction of a municipal planning commission, enforcement  
4 of the subdivision regulations of the county shall be as  
5 provided in Chapter 24 of this title, and any penalties  
6 assessed against a developer for failure to comply with the  
7 subdivision regulations of the county shall be as provided  
8 therein."

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

12           Additionally, in the event the municipal planning  
13 commission lawfully assumes the authority to exercise control  
14 over the development of subdivisions in an area where the  
15 county commission has previously exercised regulation of  
16 subdivision development, the municipal planning commission's  
17 regulatory authority shall not apply to a subdivision  
18 development which is already being regulated and enforced by  
19 the county commission pursuant to an application for plat  
20 approval submitted to the county commission by the developer  
21 prior to the date on which the municipal planning commission  
22 lawfully assumed responsibility for the development of  
23 subdivisions pursuant to this chapter.

24           Section 3. Nothing contained in this act requires a  
25 municipality to assume responsibility for roads or

1 infrastructure in subdivisions approved by the city engineer  
2 outside the municipal corporate limits or alters, amends, or  
3 supersedes the requirements relating to responsibility for  
4 road and bridge maintenance pursuant to Section 11-49-80, Code  
5 of Alabama 1975.

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

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

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

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*Kay Ivey*

President and Presiding Officer of the Senate

~~\_\_\_\_\_~~  
Speaker of the House of Representatives

SB236  
Senate 22-MAR-12  
I hereby certify that the within Act originated in and passed  
the Senate, as amended.

Patrick Harris  
Secretary

\_\_\_\_\_  
House of Representatives  
Passed: 01-MAY-12  
\_\_\_\_\_

By: Senator Sanford

APPROVED *May 8, 2012*  
TIME *11:30 am*  
*Robert Bentley*  
GOVERNOR

Alabama Secretary Of State  
Act Num....: 2012-297  
Bill Num....: S-236  
Recv'd 05/08/12 02:31pmSLF

HOUSE ACTION

DATE: 4-3 2012

RD 1 RFD: CC MG

**REPORT OF STANDING COMMITTEE**

This bill having been referred by the House to its standing committee on County & Municipal Govt was acted upon by such committee in session, and returned therefrom to the House with the recommendation that it be Passed, w/amend(s) w/sub

This 11th day of April, 2012.

*Greg Pappas* Chairperson

DATE: 4-12 2012

RF: RD 2 CAL

DATE: 20

RE REFERRED RE-COMMITTED

Committee

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill.

SB 236

YEAS 02 NAYS 0

GREG PAPPAS, Clerk

SENATE ACTION

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill.

SB 236

years 24 nays 0 abstain

PATRICK HARRIS, Secretary

I hereby certify that the notice & proof is attached to the Bill, SB \_\_\_\_\_ as required in the General Acts of Alabama, 1975 Act No. 919.

PATRICK HARRIS, Secretary

CONFERENCE COMMITTEE

Senate Conferees

SPONSOR: *Sargord*

SPONSORS: *Dr*

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HOUSE OF REPRESENTATIVES  
R. 3, all length and form of  
Year 1911 C. 111  
Date 5-1-12  
OFFICE OF THE CLERK