

1 SB354
2 127427-5
3 By Senator Brewbaker (N & P)
4 RFD: Local Legislation No. 1
5 First Read: 23-FEB-12

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to Montgomery County; to provide for the
14 installation and maintenance of an improved system of
15 recording, archiving, and retrieving documents affecting the
16 title to property and other documents recorded in the office
17 of the judge of probate; to provide for the collection and
18 disposition of a special recording fee; to provide that the
19 system shall constitute official and permanent records in
20 Montgomery County; and to repeal Act 591 of the 1965 Regular
21 Session (Acts 1965, p. 1104).

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. This act shall apply only in Montgomery
24 County. The purpose of the act is to facilitate the use of
25 public records in property transactions in Montgomery County
26 by providing for the installation of an improved system of
27 recording, archiving, and retrieving instruments and documents

1 affecting the title to real and personal property that are
2 recorded in the office of the judge of probate, and for the
3 recording, archiving, and retrieving of other instruments,
4 documents, and other uses in the discretion of the judge of
5 probate.

6 Section 2. The following words and phrases when used
7 in this act shall have the following meanings:

8 (1) GENERAL PROPERTY INSTRUMENT. A real property
9 instrument that affects the title to personal property as well
10 as real property.

11 (2) IMPROVED RECORDING SYSTEM. A system of recording
12 real property instruments and personal property instruments in
13 the probate office and, in the discretion of the judge of
14 probate, of recording other instruments and documents, which
15 system, when completed, will consist of the equipment
16 necessary and suitable to record, archive, and retrieve
17 records.

18 (3) PERSONAL PROPERTY INSTRUMENT. Any instrument or
19 document affecting the title to personal property only, as
20 distinguished from real property, that may be now or hereafter
21 required to be filed or titled for record in the probate
22 office, in accordance with the applicable requirements of the
23 laws of this state, including, without limitation, Sections
24 35-4-50 and 35-4-90, Code of Alabama 1975.

25 (4) REAL PROPERTY INSTRUMENT. Includes any
26 instrument or document affecting the title to real property
27 that may now or hereafter be filed for record in the probate

1 office pursuant to the applicable requirements of the laws of
2 this state, including, without limitation, Section 12-13-43,
3 Code of Alabama 1975, and all statutes providing for the
4 filing and recording of notices or statements of liens of any
5 kind, notices of judgments, and plats or maps showing the
6 subdivision of real estate.

7 Section 3. The judge of probate may provide for the
8 installation or enhancement, or both, and thereafter for the
9 maintenance of an improved recording, archiving, and retrieval
10 system in the Probate Office of Montgomery County. The initial
11 installation of the improved recording, archival, and
12 retrieval system shall include the following:

13 (1) The acquisition of the equipment for an improved
14 recording, archiving, and retrieving system.

15 (2) The establishment of procedures for the
16 continued recording, archiving, and retrieving of all
17 instruments and records that constitute a part of the improved
18 recording, archiving, and retrieving system.

19 (3) The installation of the improved recording,
20 archiving, and retrieving system shall be performed by a
21 person or persons, firm, or corporation engaged in the records
22 management business and experienced in setting up county
23 records and shall be supervised and inspected by a person who
24 is experienced in handling records pertaining to abstracts or
25 titles. Following installation or enhancement, or both, in the
26 county, the improved recording, archiving, and retrieving
27 system shall be thereafter maintained in the county and all

1 real property instruments, general property instruments,
2 personal property instruments, and other documents and records
3 herein provided to constitute a part of the system that may be
4 thereafter filed for record in the probate office of the
5 county shall be in accordance with the improved recording,
6 archiving, and retrieving system. Each real property
7 instrument and each personal property instrument shall be
8 operative as a record from the time of its delivery to the
9 judge of probate of the county, in accordance with existing
10 law, including, without limitation, Section 12-13-43, Code of
11 Alabama 1975.

12 Section 4. Following the installation or enhancement
13 of any system, real property instruments, personal property
14 instruments, and other documents and records to be recorded,
15 archived, and retrieved with computer-generated files or to be
16 stored and filed on either optical disk or on paper, as
17 determined by the judge of probate, shall constitute the
18 official record of instruments for the purpose of Section
19 12-13-43, Code of Alabama 1975.

20 Section 5. All laws of Alabama relating to the
21 recording of real property instruments, personal property
22 instruments, general property instruments, miscellaneous
23 instruments, and other instruments and records that may
24 constitute part of an improved recording, archiving, and
25 retrieving system installed hereunder, including, without
26 limitation, Section 12-13-43, Code of Alabama 1975, and all
27 statutes respecting the filing and recording of notices or

1 statements of liens of any kind, notices of Lis Pendens,
2 declarations of claims or exemptions, certificates of
3 judgment, or plats or maps showing subdivisions of real estate
4 that are not inconsistent with this act shall continue in
5 effect with respect to an improved recording, archiving, and
6 retrieving system installed hereunder, the recording of
7 instruments therein, and the duties of the judge of probate
8 with respect thereto.

9 Section 6. The costs of installation or enhancement
10 of any system shall be paid entirely out of the special
11 recording fees. Nothing contained in this section, however,
12 shall prohibit the county from using any part of its own funds
13 for the purpose of paying the costs of purchasing, operating,
14 or maintaining, after the initial installation, any improved
15 system installed pursuant to this act.

16 Section 7. Effective immediately after the date this
17 act becomes applicable to Montgomery County, a special
18 recording and filing fee of five dollars (\$5) shall be paid to
19 and collected by the Judge of Probate of Montgomery County,
20 with respect to each real property instrument, each personal
21 property instrument, and each Uniform Commercial Code document
22 that may be filed for record in the office of the judge of
23 probate and with respect to other instruments and documents in
24 the probate office at the discretion of the judge of probate,
25 and on and after that date, no instrument or document shall be
26 received for record in the office of the judge of probate
27 unless the special recording fee of five dollars (\$5) is paid.

1 The special recording fee shall be in addition to all other
2 fees, taxes, and charges required by law to be paid upon the
3 filing for record of any real property instrument, personal
4 property instrument, or Uniform Commercial Code document, and
5 for the recording of other instruments and documents in the
6 probate office at the discretion of the judge of probate. All
7 special recording fees collected shall be paid to a special
8 fund in the office of the judge of probate to be designated as
9 the Judge of Probate Fund. These funds shall be used at the
10 discretion of the judge of probate for an improved recording,
11 archiving, and retrieving system and other equipment,
12 maintenance, and services necessary for the improvement of the
13 office of the judge of probate. The judge of probate shall at
14 the end of each fiscal year report to the Montgomery County
15 Legislative Delegation on the use of the funds. No portion of
16 the fees shall be used for any other purposes including any
17 political purpose.

18 Section 8. The fees collected pursuant to this act
19 shall be controlled by the sole discretion of the judge of
20 probate and shall be audited by the Examiners of Public
21 Accounts. Records of the expenditures shall be open to the
22 public on a continuous basis. All costs of the audit shall be
23 paid from the fees collected.

24 Section 9. All funds held on the effective date of
25 this act in a special account in the county treasury for the
26 operation of an improved indexing and recording system in the
27 office of the judge of probate pursuant to Act 591 of the 1965

1 Regular Session (Acts 1965, p. 1104), as amended, shall be
2 transferred to the special fund of the judge of probate
3 established pursuant to this act and expended for the purposes
4 of this act as provided in this act. The indexing and
5 recording system in the office of judge of probate on the
6 effective date of this act shall continue to be operational
7 subject to any changes authorized pursuant to this act.

8 Section 10. All laws or parts of law in conflict
9 with this act are repealed. Act 591 of the 1965 Regular
10 Session (Acts 1965, p. 1104), as amended, is expressly
11 repealed.

12 Section 11. This act shall become effective on the
13 first day of the third month following its passage and
14 approval by the Governor, or its otherwise becoming law.