

1 SB409  
2 139386-5  
3 By Senator Whatley  
4 RFD: Agriculture, Conservation, and Forestry  
5 First Read: 15-MAR-12

1 SB409

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4 ENROLLED, An Act,

5 To add Section 23-1-80.1 to the Code of Alabama  
6 1975, to authorize the county commission of a county to adopt  
7 an ordinance requiring persons and firms that own timber and  
8 plan to use county roads while conducting their operations in  
9 the county to file prior notice of the intent to use county  
10 roads in conjunction with their operations; and to provide for  
11 civil fines for violations; and to prohibit any other notice,  
12 permit, license, or security to use public roads in the county  
13 with respect to timber owners.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Section 23-1-80.1 is added to the Code of  
16 Alabama 1975, to read as follows:

17 §23-1-80.1.

18 (a) A county commission, by ordinance or resolution,  
19 may require all persons or firms that own timber in any  
20 unincorporated area of the county which plan to utilize county  
21 roads for delivery of pulpwood, logs, poles, posts, or wood  
22 chips to any wood yard or processing plant to provide notice  
23 of their intent to utilize the county roads to the county  
24 commission. For purposes of this act, the term "timber owner"  
25 means any person or firm that has entered into a contract with

1 a landowner for the purposes of severing that timber and  
2 delivering pulpwood, logs, poles, posts, or wood chips to any  
3 wood yard or processing plant. In the case where the landowner  
4 harvests his or her own timber and delivers pulpwood, logs,  
5 poles, posts, or wood chips to any wood yard or processing  
6 plant, the landowner is the timber owner. The term timber  
7 owner is intended to mean the person or firm who has legal  
8 title to the timber when it enters the county road.

9 (b) Any ordinance or resolution adopted pursuant to  
10 this act shall require prior written notice by any person or  
11 firm owning timber for each separate tract prior to utilizing  
12 the county roads as follows:

13 (1) If a new access point is required for the tract,  
14 the timber owner is required to provide the county four  
15 business days' notice.

16 (2) If an existing access point is to be utilized  
17 for the tract, the timber owner is required to provide the  
18 county two business days' notice.

19 (c) For purposes of this act, an existing access  
20 point shall be defined as either a location which has  
21 previously been approved, permitted, or grandfathered through  
22 the county's driveway or access management policy and has been  
23 previously used to access the tract; or, in the event the  
24 county does not have a driveway or access management policy,  
25 if the location has been previously used to access the tract.

1 In the event the county has a driveway or access management  
2 policy and an access point has not been previously approved or  
3 permitted, and the access point has been previously used to  
4 access the tract, there is a presumption that the access point  
5 shall be considered an existing access point for the purposes  
6 of this subsection. Nothing in this act shall require a county  
7 to adopt a driveway or access management policy if it does not  
8 already have one.

9 (d) The notice shall be in the form as prescribed by  
10 the county commission and shall consist of only the following:

11 (1) A map or legal description of the area which  
12 identifies the location of the tract and the access point or  
13 points to the tract from a county road.

14 (2) With respect to the access point or points to  
15 the tract, whether the access point or points are a new or  
16 existing point or points, including details outlining how this  
17 access will be accomplished while maintaining the normal  
18 drainage features on the public road.

19 (3) The expected routes upon county roads related to  
20 the operations.

21 (4) The estimated acreage of the tract.

22 (5) The estimated date that access to the county  
23 roads will commence.

24 (6) The name, address, and daytime telephone number  
25 of the person or firm that owns the timber and the contractor

1 responsible for harvesting the timber, if not the same. If the  
2 contractor responsible for harvesting the timber is not known  
3 at the time of notice submission, the person giving notice  
4 shall provide this information prior to accessing the county  
5 roads.

6 (7) The name and address for the liability insurance  
7 carrier of the person providing the notice and the contractor  
8 responsible for harvesting the timber, if not the same. If the  
9 contractor responsible for harvesting the timber is not known  
10 at the time of notice submission, the person giving notice  
11 shall provide the information prior to accessing the county  
12 roads.

13 (e) The notice shall be submitted to the regular  
14 office of the county commission and may be submitted in  
15 person, by transmission of an electronic record via  
16 telefacsimile or electronic mail, by regular mail, or by other  
17 means as approved by the county commission.

18 (f) The notice shall be effective for a period of 12  
19 months. Upon request from the timber owner, the county may  
20 extend the notice for an additional six-month period.

21 (g) The county's receipt of the notice to access the  
22 county roads shall not constitute an act on behalf of the  
23 county which shall result in the county commission, the county  
24 engineer, or any employees of the county commission being held  
25 liable in any matter arising from the actions or inactions of

1 the timber owner, of his or her representatives, employees, or  
2 contractors.

3 (h) The notice requirements in this act shall be  
4 applicable to any use of county roads by a timber owner, his  
5 or her representatives or employees, or a contractor  
6 responsible for harvesting the timber in furtherance of its  
7 operations on or after the effective date of the ordinance or  
8 resolution adopted pursuant to this section.

9 (i) Any person owning timber that utilizes the  
10 county roads and fails to provide notice or fails to comply  
11 with the terms of the notice shall be provided a warning and  
12 an opportunity to comply with this act. Upon receipt of the  
13 warning and the failure to comply with this act, the person  
14 owning the timber may be fined five hundred dollars (\$500) for  
15 each day a violation continues to take place. All fines  
16 collected shall be payable to the county and deposited into  
17 the county's road and bridge fund. Additionally, the county  
18 shall have the right to enjoin the timber owner, his or her  
19 representatives or employees, or a contractor responsible for  
20 harvesting the timber from utilizing county roads by a civil  
21 action for the injunction brought in a court of competent  
22 jurisdiction in the county.

23 (j) This act may be enforced by the county license  
24 inspector under Section 40-12-10, Code of Alabama 1975,  
25 including issuing citations as provided in subsection (j) of

1 Section 40-12-10 for failure to comply with the notice  
2 requirements or with the terms of the notice.

3 (k) In the event that a citation has been issued for  
4 noncompliance with the provisions of this act or with the  
5 terms and conditions of the notice, no subsequent notice  
6 application shall be effective until the time all fines and  
7 penalties have been collected. Additionally, if any timber  
8 owner, his or her representatives or employees, or a  
9 contractor responsible for harvesting the timber has been  
10 cited on three separate occasions within a 24-month period,  
11 the county may require the timber owner, his or her  
12 representatives or employees, or a contractor responsible for  
13 harvesting the timber to post security as a condition of using  
14 the county roads.

15 (l) Compliance with notice provisions by persons or  
16 firms affected shall not operate to relieve such persons or  
17 firms from liability for damages which may arise from their  
18 use of public roads, bridges, or rights-of-way in the county.

19 (m) In the event the Governor declares a state of  
20 emergency as a result of an event that causes damage to timber  
21 within a county, the notification requirements set forth  
22 herein are suspended for that county for the period of time  
23 consistent with the Governor's proclamation.

24 (n) This section shall not apply to any utility that  
25 is maintaining or establishing clearances from timber or

1 vegetation for its facilities and equipment nor shall it apply  
2 to the employees, contractors, agents, or representatives of  
3 such a utility where the employees, contractors, agents, or  
4 representatives are acting within the course and scope of  
5 their employment, contract, or agency.

6 Section 2. Except as otherwise provided by this act,  
7 a county may not require any timber owner that plans to  
8 utilize county roads for delivery of pulpwood, logs, poles,  
9 posts, or wood chips to any wood yard or processing plant to  
10 provide any other notice of the activity, acquire any other  
11 specific permit or license for such purpose, or post any  
12 security as a condition of using the county roads. Any  
13 existing county rules, ordinances, or resolutions in conflict  
14 with this act are hereby repealed to the extent of such  
15 conflict. Nothing in this act shall repeal or amend any laws  
16 related to the county's general superintendence of the roads  
17 and bridges within its jurisdiction, including its driveway or  
18 access management policy, or its authority to regulate and  
19 supervise the use of its rights-of-way or roads and bridges.  
20 Additionally, the county's acceptance of the notice from the  
21 timber owner as provided herein and the other provisions of  
22 this act shall in no way limit or affect the county's  
23 authority to regulate and enforce any laws governing the use  
24 of or damage to a county-maintained road or bridge or a county  
25 right-of-way.



1                   Section 3. This act shall become effective on the  
2 first day of the third month following its passage and  
3 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB409

Senate 10-APR-12

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris  
Secretary

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House of Representatives  
Passed: 17-APR-12

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By: Senator Whatley