

1 SB57
2 208456-1
3 By Senator Melson
4 RFD: Agriculture, Conservation and Forestry
5 First Read: 02-FEB-21
6 PFD: 01/20/2021

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8 SYNOPSIS: Under the common law, when the owner of a
9 tract of land that is contiguous to a public road
10 subdivides a portion of that land that does not
11 have access to a public road, there arises an
12 implication that the owner also grants an easement
13 by necessity over the owner's land for the grantee
14 to access the public road.

15 Under existing law, when a person owns land,
16 no part of which is adjacent or contiguous to any
17 public road or highway, the person may acquire a
18 right-of-way to the nearest public road by applying
19 to and obtaining approval from the probate court of
20 the county.

21 This bill would provide that if land is
22 landlocked and is adjacent to public unused lands
23 which are located between the subject land and a
24 public road, a rebuttable presumption would arise
25 that the probate court should grant a right-of-way
26 over the public unused lands, subject to approval

1 by the State Lands Division of the Department of
2 Conservation.

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

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8 Relating to eminent domain; to amend Section 18-3-1,
9 Code of Alabama 1975, to further provide for the acquisition
10 of private rights-of-way.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Section 18-3-1, Code of Alabama 1975, is
13 amended to read as follows:

14 "§18-3-1.

15 "The owner of any tract or body of land, no part of
16 which tract or body of land is adjacent or contiguous to any
17 public road or highway, shall have and may acquire a
18 convenient right-of-way, not exceeding in width 30 feet, over
19 the lands intervening and lying between such tract or body of
20 land and the public road nearest or most convenient thereto
21 ~~provided~~, subject to the following requirements:

22 "(1) If the land is located within a municipality,
23 the owner shall obtain written approval ~~is obtained~~ from the
24 municipal government and the planning board of ~~such the~~
25 municipality prior to filing an application pursuant to
26 Section 18-3-3.

1 "(2) a. Notwithstanding Article 3 of Chapter 15 of
2 Title 9, if the land is adjacent to public unused lands, as
3 defined in Section 9-15-1, which unused lands are located
4 between the land and a public road or highway, the probate
5 court may grant a right-of-way over the unused lands to the
6 public road or highway. In determining whether to grant a
7 right-of-way pursuant to this subdivision, a rebuttable
8 presumption exists that the route over the unused lands is the
9 most convenient route for all parties.

10 "b. Notwithstanding paragraph a., a right-of-way
11 granted pursuant to this subdivision shall be subject to
12 written approval by the State Lands Division of the Department
13 of Conservation."

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