

1 HB538  
2 138289-1  
3 By Representatives Tuggle, Davis, McMillan, Moore (B),  
4 Wallace, Fincher, Laird, Williams (J), Wood, Weaver and Carns  
5 RFD: Commerce and Small Business  
6 First Read: 14-MAR-12

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8 SYNOPSIS: Under existing law, the county commission of  
9 a county has general superintendence of public  
10 roads.

11 This bill would specify that a county  
12 commission may adopt a uniform notice requirement  
13 for timber owners prior to utilizing county roads  
14 in conjunction with their timber harvesting  
15 operations. The failure to comply with the notice  
16 requirement would be punishable by a civil fine for  
17 each violation. The bill would prohibit any other  
18 notice, permit, license, or security to use public  
19 roads in the county with respect to timber owners.  
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21 A BILL  
22 TO BE ENTITLED  
23 AN ACT  
24

25 To add Section 23-1-80.1 to the Code of Alabama  
26 1975, to authorize the county commission of a county to adopt  
27 an ordinance requiring persons and firms that own timber and

1 plan to use county roads while conducting their operations in  
2 the county to file prior notice of the intent to use county  
3 roads in conjunction with their operations; and to provide for  
4 civil fines for violations; and to prohibit any other notice,  
5 permit, license, or security to use public roads in the county  
6 with respect to timber owners.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

10 §23-1-80.1.

11 (a) A county commission, by ordinance or resolution,  
12 may require all persons or firms that own timber in any  
13 unincorporated area of the county which plan to utilize county  
14 roads for delivery of pulpwood, logs, poles, posts, or wood  
15 chips to any wood yard or processing plant to provide notice  
16 of their intent to utilize the county roads to the county  
17 commission.

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

22 (1) If a new access point is required for the tract,  
23 the timber owner is required to provide the county five days'  
24 notice.

25 (2) If an existing access point is to be utilized  
26 for the tract, the timber owner is required to provide the  
27 county two days' notice.

1           (c) For purposes of this act, an existing access  
2 point shall be defined as either a location which has  
3 previously been approved, permitted, or grandfathered through  
4 the county's driveway or access management policy and has been  
5 previously used to access the tract; or, in the event the  
6 county does not have a driveway or access management policy,  
7 if the location has been previously used to access the tract.  
8 In the event the county has a driveway or access management  
9 policy and an access point has not been previously approved or  
10 permitted, and the access point has been previously used to  
11 access the tract, there is a presumption that the access point  
12 has been grandfathered and is approved for purposes of the  
13 county's driveway or access management policy. Nothing in this  
14 act shall require a county to adopt a driveway or access  
15 management policy if it does not already have one.

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

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

21           (2) With respect to the access point or points to  
22 the tract, whether the access point or points are a new or  
23 existing point or points.

24           (3) The expected routes upon county roads related to  
25 the operations.

26           (4) The estimated acreage of the tract.

1           (5) The estimated date that access to the county  
2 roads will commence.

3           (6) The name, address, and daytime telephone number  
4 of the person or firm that owns the timber and the  
5 subcontractor harvester if not the same. If the subcontractor  
6 harvester is not known at the time of notice submission, the  
7 person giving notice shall provide this information prior to  
8 accessing the county roads.

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

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

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

22           (g) The county's receipt of the notice to access the  
23 county roads shall not constitute an act on behalf of the  
24 county which shall result in the county commission, the county  
25 engineer, or any employees of the county commission being held  
26 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 in  
5 furtherance of its operations on or after the effective date  
6 of the ordinance or resolution adopted pursuant to this  
7 section.

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

20 (j) This act may be enforced by the county license  
21 inspector under Section 40-12-10, Code of Alabama 1975,  
22 including issuing citations as provided in subsection (j) of  
23 Section 40-12-10 for failure to comply with the notice  
24 requirements or with the terms of the notice.

25 (k) In the event that a citation has been issued for  
26 noncompliance with the provisions of this act or with the  
27 terms and conditions of the notice, no subsequent notice

1 application shall be effective until the time all fines and  
2 penalties have been collected. Additionally, if any timber  
3 owner has been cited on three separate occasions within a  
4 24-month period, the county may require the timber owner to  
5 post security as a condition of using the county roads.

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

10 (m) In the event the Governor declares a state of  
11 emergency as a result of an event that causes damage to timber  
12 within a county, the notification requirements set forth  
13 herein are suspended for that county for the period of time  
14 consistent with the Governor's proclamation.

15 Section 2. Except as otherwise provided by this act,  
16 a county may not require any timber owner that plans to  
17 utilize county roads for delivery of pulpwood, logs, poles,  
18 posts, or wood chips to any wood yard or processing plant to  
19 provide any other notice of the activity, acquire any other  
20 permit or license, or post any security as a condition of  
21 using the county roads. Any existing county rules, ordinances,  
22 or resolutions in conflict with this act are hereby repealed  
23 to the extent of such conflict. Nothing in this act shall  
24 repeal or amend any laws related to the county's general  
25 superintendence of the roads and bridges within its  
26 jurisdiction, including its driveway or access management  
27 policy, or its authority to regulate and supervise the use of

1       such roads and bridges. Additionally, this act shall in no way  
2       limit or affect the county's authority to regulate and enforce  
3       any laws governing the use of or damage to a county-maintained  
4       road or bridge or a county right-of-way.

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