

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

1 SB409

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

23 §23-1-80.1.

24 (a) A county commission, by ordinance or resolution,
25 may require all persons or firms that own timber in any
26 unincorporated area of the county which plan to utilize county

1 roads for delivery of pulpwood, logs, poles, posts, or wood
2 chips to any wood yard or processing plant to provide notice
3 of their intent to utilize the county roads to the county
4 commission. For purposes of this act, the term "timber owner"
5 means any person or firm that has entered into a contract with
6 a landowner for the purposes of severing that timber and
7 delivering pulpwood, logs, poles, posts, or wood chips to any
8 wood yard or processing plant. In the case where the landowner
9 harvests his or her own timber and delivers pulpwood, logs,
10 poles, posts, or wood chips to any wood yard or processing
11 plant, the landowner is the timber owner. The term timber
12 owner is intended to mean the person or firm who has legal
13 title to the timber when it enters the county road.

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

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

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

24 (c) For purposes of this act, an existing access
25 point shall be defined as either a location which has
26 previously been approved, permitted, or grandfathered through

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

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

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

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

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

25 (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 contractor
5 responsible for harvesting the timber, if not the same. If the
6 contractor responsible for harvesting the timber is not known
7 at the time of notice submission, the person giving notice
8 shall provide this information prior to accessing the county
9 roads.

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

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

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

25 (g) The county's receipt of the notice to access the
26 county roads shall not constitute an act on behalf of the

1 county which shall result in the county commission, the county
2 engineer, or any employees of the county commission being held
3 liable in any matter arising from the actions or inactions of
4 the timber owner, of his or her representatives, employees, or
5 contractors.

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

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

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

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

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

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

1 (n) This section shall not apply to any utility that
2 is maintaining or establishing clearances from timber or
3 vegetation for its facilities and equipment nor shall it apply
4 to the employees, contractors, agents, or representatives of
5 such a utility where the employees, contractors, agents, or
6 representatives are acting within the course and scope of
7 their employment, contract, or agency.

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

1 of or damage to a county-maintained road or bridge or a county
2 right-of-way.

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

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3 Senate

4 Read for the first time and referred to the Senate
5 committee on Agriculture, Conservation, and For-
6 estry..... 15-MAR-12
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8 Read for the second time and placed on the calen-
9 dar with 1 substitute and..... 22-MAR-12
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11 Read for the third time and passed as amended 10-APR-12

12 Yeas 32
13 Nays 0

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15 Patrick Harris
16 Secretary
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