

1 HB148
2 154697-6
3 By Representative Johnson (R)
4 RFD: County and Municipal Government
5 First Read: 14-JAN-14
6 PFD: 01/10/2014

1 ENGROSSED

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4 A BILL
5 TO BE ENTITLED
6 AN ACT
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8 To amend Sections 23-4-5 and 23-4-20, Code of
9 Alabama 1975, relating to the vacation of public roads,
10 streets, and highways; to provide further for appeal of
11 decisions regarding whether to vacate a street, alley, or
12 highway; to provide further for procedures relating to
13 petitions to vacate; to provide for approval under certain
14 conditions; and to provide that a governing body's decision to
15 deny the request of a landowner to vacate an unpaved county
16 road would be required to be supported by the governing body's
17 detailed written findings of fact to support the denial.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Sections 23-4-5 and 23-4-20, Code of
20 Alabama 1975, are amended to read as follows:

21 "§23-4-5.

22 "Any party affected by the vacation of a governing
23 body's decision vacating or declining to vacate a street,
24 alley, or highway pursuant to this chapter may appeal within
25 30 days of the decision of the governing body vacating the
26 street to the circuit court of the county in which the lands
27 are situated, and upon such appeal, the proceeding shall be

1 tried de novo, either party having the right to demand trial
2 by jury when and as demand is authorized in civil actions. The
3 An appeal under this section shall not suspend the effect of
4 the a decision of the governing body vacating a street,
5 alley, or highway unless the appealing party shall give bond,
6 with sureties, in an amount to be determined by the circuit
7 judge. From the judgment of the circuit court, an appeal may
8 be taken within 42 days by either party to the Court of Civil
9 Appeals or the Supreme Court in accordance with the Alabama
10 Rules of Appellate Procedure.

11 "§23-4-20.

12 "(a) Subject to the conditions set out in this
13 subsection, any street or alley may be vacated, in whole or in
14 part, by the owner or owners of the land abutting the street
15 or alley or abutting that portion of the street or alley
16 desired to be vacated by following the procedures set out
17 herein. The owner or owners of the land abutting the street or
18 alley to be vacated shall join in a written petition
19 requesting that the street or alley be vacated and shall file
20 the petition with the governing body with jurisdiction over
21 the street or alley, or portion thereof, requesting the
22 governing body's approval of the vacation. Following receipt
23 of the written request for assent, the The governing body
24 shall set the request for vacation for public hearing within
25 90 days from the date the petition is received. Notice of the
26 hearing shall be provided as set out in Section 36-25A-3 for
27 notice of meetings of the governing body and shall describe

1 the street, alley, highway, or portion thereof requested to be
2 vacated in the petition. A copy of the notice shall also be
3 served by U.S. mail at least 30 days prior to the scheduled
4 meeting on any abutting owner and on any entity known to have
5 facilities or equipment such as utility lines, both above
6 ground or buried, within the public right-of-way of the
7 street, alley, or highway to be vacated. Following the public
8 hearing, if the governing body elects to take action on the
9 petition, the governing body shall follow the procedures in
10 Section 23-4-2(b) for taking the action. Any appeal of the
11 decision of the governing body shall be~~act upon the request~~
12 ~~applying the same notice, hearing, voting, and appeal~~
13 ~~procedures as set forth provided in Sections 23-4-2 and~~
14 ~~Section 23-4-5, and if~~ If the governing body approves the
15 vacation, it shall have the same effect as provided therein in
16 Section 23-4-2(b), including that the vacation shall not
17 deprive other property owners of any right they may have to
18 convenient and reasonable means of ingress and egress to and
19 from their property, and if that right is not afforded by the
20 remaining streets and alleys, another street or alley
21 affording that right must be dedicated.

22 "(b) The provisions of this section shall not be
23 held to repeal any existing statute relating to the vacation
24 of roads, streets, or alleys, or parts thereof, and shall not
25 be held to limit or expand any civil causes of action
26 available under the law.

1 ~~"(c) Notwithstanding the provisions of subsection~~
2 ~~(a) or Section 23-4-2 in conflict with this subsection, if the~~
3 ~~owners of property abutting all sides of an unpaved county~~
4 ~~road petition the county commission to vacate the county road,~~
5 ~~the petition shall be deemed approved 150 days thereafter,~~
6 ~~unless the county commission denies the petition and makes a~~
7 ~~specific finding of fact based on evidence in the record that~~
8 ~~the vacation will deprive other property owners of convenient~~
9 ~~and reasonable means of ingress and egress to and from their~~
10 ~~property; that the vacation will substantially harm public~~
11 ~~health or safety by preventing or significantly delaying the~~
12 ~~provision of police, fire, emergency medical, school bus, or~~
13 ~~sanitation services to identified citizens; and that the use~~
14 ~~of the road is more than minimal."~~

15 "(c) Notwithstanding any provision of subsection (a)
16 or Section 23-4-2, if the owners of family-owned property
17 abutting both sides of a county road or portion of a county
18 road petition the county commission to vacate the county road
19 or portion of the county road, any member of the county
20 commission may make a motion to approve the petition.

21 "(d) Notwithstanding the provisions of subsection
22 (a) or Section 23-4-2 in conflict with this subsection, if the
23 owners of property abutting all sides of an unpaved county
24 road petition the county commission to vacate the county road,
25 the petition shall be deemed approved 180 days thereafter,
26 unless the county commission denies the petition."

1 Section 2. Section 23-4-20 of the Code of Alabama
2 1975, is amended to read as follows:

3 "§23-4-20.

4 "(a) Subject to subsection (c) and the conditions
5 set out in this subsection, any street or alley may be
6 vacated, in whole or in part, by the owner or owners of the
7 land abutting the street or alley or abutting that portion of
8 the street or alley desired to be vacated by following the
9 procedures set out herein. The owner or owners of the land
10 abutting the street or alley to be vacated shall join in a
11 written petition requesting that the street or alley be
12 vacated and shall file the petition with the governing body
13 with jurisdiction over the street or alley, or portion
14 thereof, requesting the governing body's approval of the
15 vacation. Following receipt of the written request for assent,
16 the governing body shall act upon the request applying the
17 same notice, hearing, voting, and appeal procedures as set
18 forth in Sections 23-4-2 and 23-4-5, and if the governing body
19 approves the vacation, it shall have the same effect as
20 provided therein, including that the vacation shall not
21 deprive other property owners of any right they may have to
22 convenient and reasonable means of ingress and egress to and
23 from their property, and if that right is not afforded by the
24 remaining streets and alleys, another street or alley
25 affording that right must be dedicated.

26 "(b) The provisions of this section shall not be
27 held to repeal any existing statute relating to the vacation

1 of roads, streets, or alleys, or parts thereof, and shall not
2 be held to limit or expand any civil causes of action
3 available under the law.

4 "(c) Notwithstanding any provision of subsection (a)
5 or Section 23-4-2, if the owners of family-owned property
6 abutting both sides of a county road or portion of a county
7 road petition the county commission to vacate the county road
8 or portion of the county road, any member of the county
9 commission may make a motion to approve the petition."

10 Section 3. This act shall become effective
11 immediately following its passage and approval by the
12 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on County and Mu-
nicipal Government..... 14-JAN-14

Read for the second time and placed
on the calendar..... 16-JAN-14

Read for the third time and passed
as amended..... 04-FEB-14

Yeas 90, Nays 0, Abstains 1

Jeff Woodard
Clerk