

1 HB371
2 154817-4
3 By Representative Wood
4 RFD: Commerce and Small Business
5 First Read: 30-JAN-14

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8 SYNOPSIS: Existing law provides a right of appeal to
9 the circuit court from a governing body's decision
10 to vacate a road or street, but does not provide a
11 corresponding right to appeal a denial of a
12 request.

13 This bill would provide a reciprocal right
14 of appeal to the circuit court to any party
15 aggrieved by a governing body's decision to vacate
16 or not to vacate a road or street.

17 Under existing law, Section 23-4-20, Code of
18 Alabama 1975, provides that when all abutting
19 landowners request to vacate a street or alley, a
20 governing body may still refuse to vacate the
21 street or alley without making a finding of fact
22 concerning the public interest supporting the
23 refusal to approve the request to vacate.

24 This bill would further provide for the
25 procedure for the vacation of a road or street and
26 would provide that if all abutting landowners
27 request the vacation of an unpaved county road, the

1 governing bodies could decline to vacate the county
2 road but only if the governing body makes certain
3 findings of fact to support the denial.

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5 A BILL
6 TO BE ENTITLED
7 AN ACT
8

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

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

22 "§23-4-5.

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

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

12 "§23-4-20.

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

1 notice of meetings of the governing body and shall describe
2 the street, alley, highway, or portion thereof requested to be
3 vacated in the petition. A copy of the notice shall also be
4 served by U.S. mail at least 30 days prior to the scheduled
5 meeting on any abutting owner and on any entity known to have
6 facilities or equipment such as utility lines, both above
7 ground or buried, within the public right-of-way of the
8 street, alley, or highway to be vacated. Following the public
9 hearing, if the governing body elects to take action on the
10 petition, the governing body shall follow the procedures in
11 Section 23-4-2(b) for taking the action. Any appeal of the
12 decision of the governing body shall be act upon the request
13 applying the same notice, hearing, voting, and appeal
14 procedures as set forth provided in Sections 23-4-2 and
15 Section 23-4-57, and if If the governing body approves the
16 vacation, it shall have the same effect as provided therein in
17 Section 23-4-2(b), including that the vacation shall not
18 deprive other property owners of any right they may have to
19 convenient and reasonable means of ingress and egress to and
20 from their property, and if that right is not afforded by the
21 remaining streets and alleys, another street or alley
22 affording that right must be dedicated.

23 " (b) The provisions of this section shall not be
24 held to repeal any existing statute relating to the vacation
25 of roads, streets, or alleys, or parts thereof, and shall not
26 be held to limit or expand any civil causes of action
27 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 Section 2. All laws or parts of laws which conflict
16 with this act are repealed.

17 Section 3. This act shall become effective
18 immediately following its passage and approval by the
19 Governor, or its otherwise becoming law.