

House Bill 2208

Sponsored by Representative VIAL, Senators THATCHER, JOHNSON (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Relieves petitioner for way of necessity from payment of costs and fees under certain circumstances.

A BILL FOR AN ACT

1 Relating to ways of necessity; creating new provisions; and amending ORS 376.175 and 376.180.

2 **Be It Enacted by the People of the State of Oregon:**

3 **SECTION 1.** ORS 376.175 is amended to read:

4 376.175. (1) Upon consideration of the matters and issues presented under ORS 376.150 to
5 376.200, the county governing body shall determine whether or not a need has been demonstrated
6 for the granting of a way of necessity under ORS 376.150 to 376.200 and shall enter an order
7 granting or denying the way of necessity.
8

9 (2) Any order entered under this section shall:

10 (a) State whether the way of necessity is granted or denied;

11 (b) Declare as established any way of necessity that is granted;

12 (c) Describe the exact location and width of any way of necessity established;

13 (d) Describe those uses that are permitted on any way of necessity established;

14 (e) **Except as provided in section 4 of this 2017 Act**, direct the petitioner to pay costs and
15 reasonable attorney fees incurred by each owner of land whose land was subject to the petitioner's
16 action for a way of necessity under ORS 376.150 to 376.200;

17 (f) Establish the amount of compensation due to any owner of land across which any way of
18 necessity has been established and, **except as provided in section 4 of this 2017 Act**, direct the
19 petitioner to pay the compensation; and

20 (g) Establish the costs incurred by the county in the procedures for the way of necessity under
21 ORS 376.150 to 376.200 and, **except as provided in section 4 of this 2017 Act**, direct the petitioner
22 to reimburse the county for those costs not already paid by petitioner.

23 (3) An order entered under subsections (1) and (2) of this section to provide for utility service,
24 as set forth in ORS 376.150 (2)(b), shall conform to affected utility policy and standards.

25 (4) A petitioner shall pay any costs the petitioner is directed to pay under an order issued under
26 this section within 60 days after entry of the order. The petitioner is liable for any costs not paid
27 within the time established in this subsection. If more than one landowner joins in a petition for a
28 way of necessity under ORS 376.155, every petitioner granted use of the way of necessity shall be
29 jointly and severally liable for any costs ordered to be paid.

30 (5) Any party to the action for a way of necessity may contest any part of the order of the
31 county governing body in an appeal filed with the circuit court within 30 days after entry of the

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 order of the county governing body.

2 **SECTION 2.** ORS 376.180 is amended to read:

3 376.180. A way of necessity established under ORS 376.150 to 376.200 shall:

4 (1) Be located to cause the least possible damage to land across which it is located;

5 (2) Be fenced or gated if required by the county governing body;

6 (3) Not be connected to a public road in a location or manner that creates a traffic hazard or
7 decreases the safety on the public road;

8 (4) Be established only for uses in connection with the property for which the way of necessity
9 is sought;

10 (5) Not be subject to any use that is not described in the order establishing the way of necessity;

11 (6) Not exceed 30 feet in width unless authorized by the county governing body for engineering
12 purposes;

13 (7) Not be connected to a public road where the rights of access to the road have been acquired
14 by the state or a county unless the state or governing body of the county grants permission for the
15 connection;

16 (8) Not be established if the property for which the way of necessity is sought has an existing
17 enforceable access to a public road, **unless the existing enforceable access is insufficient to
18 allow the development and use of the property for its primary purpose, as determined by the
19 applicable land use regulations;**

20 (9) Not be established if the petitioner for the way of necessity could acquire an easement for
21 access to a public road through other legal action, **unless the easement that could be acquired
22 is insufficient to allow the development and use of the property for which the way of neces-
23 sity is sought for its primary purpose, as determined by the applicable land use regulations;**

24 (10) Not be established for land that has been subdivided or partitioned in violation of ORS
25 chapter 92;

26 (11) Not be established over land owned by the state or a political subdivision of the state unless
27 permission is granted for the way of necessity under ORS 376.185; and

28 (12) Not be established for any land if the owner of the land had knowingly eliminated access
29 to all public roads from the land by the sale of other land owned by the landowner.

30 **SECTION 3. Section 4 of this 2017 Act is added to and made a part of ORS 376.150 to
31 376.200.**

32 **SECTION 4. (1) When the rights of access to a public road or roads have been acquired
33 by the state or a local government, and the property for which the way of necessity is sought
34 does not retain reasonable access as a result of the acquisition of the access rights, the
35 governing body responsible for acquiring the rights of access, and not the petitioner, shall
36 bear the liability for all compensation and costs awarded under ORS 376.175.**

37 **(2) For purposes of this section, a property does not retain reasonable access if, after
38 acquisition of the rights of access by the state or a local government, the property does not
39 have access to a public road, or the existing enforceable access that remains is insufficient
40 to allow the development and use of the property for its primary purpose, as determined by
41 the applicable land use regulations.**