

Requested by Representative VIAL

**PROPOSED AMENDMENTS TO  
HOUSE BILL 3463**

1 On page 1 of the printed bill, line 2, after the semicolon delete the rest  
2 of the line and insert “creating new provisions; and amending ORS 376.155  
3 and 376.180.”.

4 Delete lines 4 through 31 and delete page 2 and insert:

5 **“SECTION 1.** ORS 376.180 is amended to read:

6 “376.180. (1) A way of necessity established under ORS 376.150 to 376.200  
7 shall:

8 “[1] (a) Be located to cause the least possible damage to land across  
9 which it is located;

10 “[2] (b) Be fenced or gated if required by the county governing body;

11 “[3] (c) Not be connected to a public road in a location or manner that  
12 creates a traffic hazard or decreases the safety on the public road;

13 “[4] (d) Be established only for uses in connection with the property for  
14 which the way of necessity is sought;

15 “[5] (e) Not be subject to any use that is not described in the order es-  
16 tablishing the way of necessity;

17 “[6] (f) Not exceed 30 feet in width unless authorized by the county  
18 governing body for engineering purposes;

19 “[7] (g) Not be connected to a public road where the rights of access to  
20 the road have been acquired by the state or a county unless the state or  
21 governing body of the county grants permission for the connection;

1       “[(8)] (h) **Except as provided in subsection (2) of this section**, not be  
2 established if the property for which the way of necessity is sought has an  
3 existing enforceable access to a public road;

4       “[(9)] (i) **Except as provided in subsection (2) of this section**, not be  
5 established if the petitioner for the way of necessity could acquire an ease-  
6 ment for access to a public road through other legal action;

7       “[(10)] (j) Not be established for land that has been subdivided or parti-  
8 tioned in violation of ORS chapter 92;

9       “[(11)] (k) Not be established over land owned by the state or a political  
10 subdivision of the state unless permission is granted for the way of necessity  
11 under ORS 376.185; and

12       “[(12)] (L) Not be established for any land if the owner of the land had  
13 knowingly eliminated access to all public roads from the land by the sale  
14 of other land owned by the landowner.

15       **“(2) Notwithstanding the limitations of subsection (1)(h) and (i) of  
16 this section, a way of necessity may be established when the  
17 petitioner’s property has an existing enforceable access to a public  
18 road if:**

19       **“(a) Rights of access from the property to a public road were pre-  
20 viously acquired by eminent domain or threat of eminent domain by  
21 a state or local government;**

22       **“(b) The property is:**

23       **“(A) Within the city limits of an incorporated city that:**

24       **“(i) Is within an urban growth boundary administered by a metro-  
25 politan service district; and**

26       **“(ii) On the effective date of this 2017 Act, has a population of less  
27 than 25,000 residents;**

28       **“(B) Undeveloped or developed with a single-family dwelling and  
29 associated outbuildings; and**

30       **“(C) Zoned for commercial use and was zoned for commercial use**

1 **when the rights of access were acquired;**

2 **“(c) On the public road to which the property has an existing en-**  
3 **forceable access, traffic operations, traffic speeds or traffic volumes**  
4 **have substantially changed since the rights of access were acquired;**  
5 **and**

6 **“(d) The public roadway engineer with jurisdiction over the public**  
7 **road to which the property has existing enforceable access determines**  
8 **by objective engineering standards that development of the property**  
9 **to the uses allowed by the zoning regulations in effect when the access**  
10 **rights were acquired will not meet current sight spacing standards or**  
11 **approach road spacing standards or may create unsafe roadway con-**  
12 **ditions.**

13 **“SECTION 2.** ORS 376.180, as amended by section 1 of this 2017 Act, is  
14 amended to read:

15 **“376.180. [(1)] A way of necessity established under ORS 376.150 to 376.200**  
16 **shall:**

17 **“[(a)] (1) Be located to cause the least possible damage to land across**  
18 **which it is located;**

19 **“[(b)] (2) Be fenced or gated if required by the county governing body;**

20 **“[(c)] (3) Not be connected to a public road in a location or manner that**  
21 **creates a traffic hazard or decreases the safety on the public road;**

22 **“[(d)] (4) Be established only for uses in connection with the property for**  
23 **which the way of necessity is sought;**

24 **“[(e)] (5) Not be subject to any use that is not described in the order es-**  
25 **tablishing the way of necessity;**

26 **“[(f)] (6) Not exceed 30 feet in width unless authorized by the county**  
27 **governing body for engineering purposes;**

28 **“[(g)] (7) Not be connected to a public road where the rights of access to**  
29 **the road have been acquired by the state or a county unless the state or**  
30 **governing body of the county grants permission for the connection;**

1       “[(h)] **(8)** [*Except as provided in subsection (2) of this section,*] Not be es-  
2       tablished if the property for which the way of necessity is sought has an  
3       existing enforceable access to a public road;

4       “[(i)] **(9)** [*Except as provided in subsection (2) of this section,*] Not be es-  
5       tablished if the petitioner for the way of necessity could acquire an easement  
6       for access to a public road through other legal action;

7       “[(j)] **(10)** Not be established for land that has been subdivided or parti-  
8       tioned in violation of ORS chapter 92;

9       “[(k)] **(11)** Not be established over land owned by the state or a political  
10       subdivision of the state unless permission is granted for the way of necessity  
11       under ORS 376.185; and

12       “[(L)] **(12)** Not be established for any land if the owner of the land had  
13       knowingly eliminated access to all public roads from the land by the sale  
14       of other land owned by the landowner.

15       “[(2) *Notwithstanding the limitations of subsection (1)(h) and (i) of this*  
16       *section, a way of necessity may be established when the petitioner’s property*  
17       *has an existing enforceable access to a public road if:*]

18       “[(a) *Rights of access from the property to a public road were previously*  
19       *acquired by eminent domain or threat of eminent domain by a state or local*  
20       *government;*]

21       “[(b) *The property is:*]

22       “[(A) *Within the city limits of an incorporated city that:*]

23       “[(i) *Is within an urban growth boundary administered by a metropolitan*  
24       *service district; and]*

25       “[(ii) *On the effective date of this 2017 Act, has a population of less than*  
26       *25,000 residents;*]

27       “[(B) *Undeveloped or developed with a single-family dwelling and associ-*  
28       *ated outbuildings; and]*

29       “[(C) *Zoned for commercial use and was zoned for commercial use when the*  
30       *rights of access were acquired;*]

1       “[(c) *On the public road to which the property has an existing enforceable*  
2 *access, traffic operations, traffic speeds or traffic volumes have substantially*  
3 *changed since the rights of access were acquired; and]*

4       “[(d) *The public roadway engineer with jurisdiction over the public road*  
5 *to which the property has existing enforceable access determines by objective*  
6 *engineering standards that development of the property to the uses allowed by*  
7 *the zoning regulations in effect when the access rights were acquired will not*  
8 *meet current sight spacing standards or approach road spacing standards or*  
9 *may create unsafe roadway conditions.*]

10       **“SECTION 3.** ORS 376.155 is amended to read:

11       “376.155. (1) To establish a way of necessity under ORS 376.150 to 376.200,  
12 a landowner shall file a petition with the governing body of the county in  
13 which the land is located.

14       “(2) A petition filed under this section shall contain a drawing and a  
15 narrative statement that contain all of the following information:

16       “(a) The location and legal description of the property to be served by the  
17 proposed way of necessity.

18       “(b) The location of all public roads located in the vicinity of the property  
19 to be served by the proposed way of necessity that are capable of being used  
20 to provide access to the property. The petition shall include the location of  
21 public roads that are not open for public use.

22       “(c) A specific proposed location for the proposed way of necessity.

23       “(d) Evidence showing the necessity for the establishment of a way of  
24 necessity.

25       “(e) Evidence that either:

26       “(A) The proposed way of necessity does not connect to a public road that  
27 has access rights acquired and limited by the state or county; or

28       “(B) If the public road proposed for access by way of necessity has the  
29 limited access rights, the state or county is willing to grant permission to  
30 connect the proposed way of necessity to the public road.

1 “(f) Evidence that the proposed way of necessity may be connected to the  
2 public road safely.

3 “(g) Evidence that the specific location proposed for the way of necessity  
4 is the nearest practicable point for connection to a way of necessity to a  
5 public road.

6 “(h) The names and addresses of the persons owning the land across  
7 which the way of necessity could be located.

8 “(i) The petitioner’s proposal for the amount of compensation to persons  
9 owning land across which the way of necessity is proposed to be located.

10 “(j) Evidence that the petitioner does not have an existing easement or  
11 right to an easement to provide access to a public road.

12 “(k) **Except as provided in ORS 376.180**, evidence that the petitioner  
13 does not have any enforceable access to a public road.

14 “(L) If the petition is to establish a way of necessity described in ORS  
15 376.150 (2)(c), evidence that:

16 “(A) A publicly owned sewer line does not exist in the portion of any  
17 public road adjacent to the land; and

18 “(B) The land is located in a jurisdiction that has adopted and imple-  
19 mented a public sewer extension program designed to make public sewers  
20 available to land lacking access to a public sewer line in the portion of a  
21 public road adjacent to the land.

22 “**SECTION 4.** ORS 376.155, as amended by section 3 of this 2017 Act, is  
23 amended to read:

24 “376.155. (1) To establish a way of necessity under ORS 376.150 to 376.200,  
25 a landowner shall file a petition with the governing body of the county in  
26 which the land is located.

27 “(2) A petition filed under this section shall contain a drawing and a  
28 narrative statement that contain all of the following information:

29 “(a) The location and legal description of the property to be served by the  
30 proposed way of necessity.

1 “(b) The location of all public roads located in the vicinity of the property  
2 to be served by the proposed way of necessity that are capable of being used  
3 to provide access to the property. The petition shall include the location of  
4 public roads that are not open for public use.

5 “(c) A specific proposed location for the proposed way of necessity.

6 “(d) Evidence showing the necessity for the establishment of a way of  
7 necessity.

8 “(e) Evidence that either:

9 “(A) The proposed way of necessity does not connect to a public road that  
10 has access rights acquired and limited by the state or county; or

11 “(B) If the public road proposed for access by way of necessity has the  
12 limited access rights, the state or county is willing to grant permission to  
13 connect the proposed way of necessity to the public road.

14 “(f) Evidence that the proposed way of necessity may be connected to the  
15 public road safely.

16 “(g) Evidence that the specific location proposed for the way of necessity  
17 is the nearest practicable point for connection to a way of necessity to a  
18 public road.

19 “(h) The names and addresses of the persons owning the land across  
20 which the way of necessity could be located.

21 “(i) The petitioner’s proposal for the amount of compensation to persons  
22 owning land across which the way of necessity is proposed to be located.

23 “(j) Evidence that the petitioner does not have an existing easement or  
24 right to an easement to provide access to a public road.

25 “(k) [*Except as provided in ORS 376.180,*] Evidence that the petitioner  
26 does not have any enforceable access to a public road.

27 “(L) If the petition is to establish a way of necessity described in ORS  
28 376.150 (2)(c), evidence that:

29 “(A) A publicly owned sewer line does not exist in the portion of any  
30 public road adjacent to the land; and

1       “(B) The land is located in a jurisdiction that has adopted and imple-  
2 mented a public sewer extension program designed to make public sewers  
3 available to land lacking access to a public sewer line in the portion of a  
4 public road adjacent to the land.

5       “**SECTION 5. The amendments to ORS 376.155 and 376.180 by**  
6 **sections 2 and 4 of this 2017 Act become operative on January 2, 2027.**

7       “**SECTION 6. (1) The amendments to ORS 376.155 and 376.180 by**  
8 **sections 1 and 3 of this 2017 Act apply to petitions to establish a way**  
9 **of necessity filed under ORS 376.155 on or after the effective date of**  
10 **this 2017 Act and before January 2, 2027.**

11       “(2) The amendments to ORS 376.155 and 376.180 by sections 2 and  
12 4 of this 2017 Act apply to petitions to establish a way of necessity filed  
13 under ORS 376.155 on or after January 2, 2027.”.

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