

1                                   A bill to be entitled  
 2           An act relating to transportation access;  
 3           amending s. 704.01, F.S.; revising criteria for  
 4           establishing a statutory way of necessity  
 5           exclusive of common-law right; amending s.  
 6           704.04, F.S.; removing a limitation on the  
 7           existence of certain easements; providing for  
 8           reenactment of certain provisions under certain  
 9           circumstances; providing for effectiveness;  
 10          providing an effective date.

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 12 Be It Enacted by the Legislature of the State of Florida:

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 14           Section 1. Subsection (2) of section 704.01, Florida  
 15 Statutes, is amended to read:

16           704.01 Common-law and statutory easements defined and  
 17 determined.--

18           (2) STATUTORY WAY OF NECESSITY EXCLUSIVE OF COMMON-LAW  
 19 RIGHT.--Based on public policy, convenience, and necessity, a  
 20 statutory way of necessity exclusive of any common-law right  
 21 exists when any land, including land formed by accretion,  
 22 reliction, or other naturally occurring processes, or portion  
 23 thereof, ~~outside any municipality~~ which is being used or is  
 24 desired to be used for a dwelling or dwellings or for  
 25 agricultural or for timber raising or cutting or stockraising  
 26 purposes ~~is shall be~~ shut off or hemmed in by lands, fencing,  
 27 or other improvements by ~~of~~ other persons so that no  
 28 practicable route of egress or ingress ~~is shall be~~ available  
 29 therefrom to the nearest practicable public or private road in  
 30 which the landlocked owner has vested easement rights. The  
 31 owner or tenant thereof, or anyone in their behalf, lawfully

1 may use and maintain an easement for persons, vehicles, stock,  
 2 franchised cable television service, and any utility service,  
 3 including, but not limited to, water, wastewater, reclaimed  
 4 water, natural gas, electricity, and telephone service, over,  
 5 under, through, and upon the lands which lie between the said  
 6 shut-off or hemmed-in lands and such public or private road by  
 7 means of the nearest practical route, considering the use to  
 8 which said lands are being put; and the use thereof, as  
 9 aforesaid, shall not constitute a trespass; nor shall the  
 10 party thus using the same be liable in damages for the use  
 11 thereof, ~~+~~ provided that such easement shall be used only in an  
 12 orderly and proper manner.

13           Section 2. Effective only if a court determines that  
 14 subsection (2) of section 704.01, Florida Statutes, as amended  
 15 by section 1 of this act, is unconstitutional and such  
 16 determination is upheld on appeal, it is the intent of the  
 17 Legislature that the provisions of such subsection shall be  
 18 the same as those in existence prior to amendment by this act,  
 19 and to that end subsection (2) of section 704.01, Florida  
 20 Statutes, as it existed prior to amendment by section 1 of  
 21 this act, is reenacted to read:

22           704.01 Common-law and statutory easements defined and  
 23 determined.--

24           ~~(2) STATUTORY WAY OF NECESSITY EXCLUSIVE OF COMMON-LAW~~  
 25 ~~RIGHT.--Based on public policy, convenience, and necessity, a~~  
 26 ~~statutory way of necessity exclusive of any common-law right~~  
 27 ~~exists when any land or portion thereof outside any~~  
 28 ~~municipality which is being used or desired to be used for a~~  
 29 ~~dwelling or dwellings or for agricultural or for timber~~  
 30 ~~raising or cutting or stockraising purposes shall be shut off~~  
 31 ~~or hemmed in by lands, fencing, or other improvements of other~~

1 persons so that no practicable route of egress or ingress  
2 shall be available therefrom to the nearest practicable public  
3 or private road. The owner or tenant thereof, or anyone in  
4 their behalf, lawfully may use and maintain an easement for  
5 persons, vehicles, stock, franchised cable television service,  
6 and any utility service, including, but not limited to, water,  
7 wastewater, reclaimed water, natural gas, electricity, and  
8 telephone service, over, under, through, and upon the lands  
9 which lie between the said shut-off or hemmed-in lands and  
10 such public or private road by means of the nearest practical  
11 route, considering the use to which said lands are being put;  
12 and the use thereof, as aforesaid, shall not constitute a  
13 trespass; nor shall the party thus using the same be liable in  
14 damages for the use thereof; provided that such easement shall  
15 be used only in an orderly and proper manner.

16 Section 3. Section 704.04, Florida Statutes, is  
17 amended to read:

18 704.04 Judicial remedy and compensation to servient  
19 owner.--When the owner or owners of such lands across which a  
20 statutory way of necessity under s. 704.01(2) is claimed,  
21 exclusive of the common-law right, objects or refuses to  
22 permit the use of such way under the conditions set forth  
23 herein or until she or he receives compensation therefor,  
24 either party or the board of county commissioners of such  
25 county may file suit in the circuit court of the county  
26 wherein the land is located in order to determine if the claim  
27 for said easement exists, and the amount of compensation to  
28 which said party is entitled for use of such easement. When  
29 ~~where~~ said easement is awarded to the owner of the dominant  
30 tenement, it shall be in compliance with s. 704.01(2) and  
31 shall exist so long as such easement is reasonably necessary

1 ~~for the purposes stated herein.~~ The court, in its discretion,  
2 shall determine all questions, including the type, duration,  
3 extent, and location of the easement, the amount of  
4 compensation, and the attorney's fees and costs to be awarded  
5 to either party for unreasonable refusal to comply with the  
6 provisions of s. 704.01(2), provided that if either of said  
7 parties so requests in her or his original pleadings, the  
8 amount of compensation may be determined by a jury trial. The  
9 easement shall date from the time the award is paid.

10 Section 4. Effective only if a court determines that  
11 section 704.04, Florida Statutes, as amended by section 3 of  
12 this act, is unconstitutional and such determination is upheld  
13 on appeal, it is the intent of the Legislature that the  
14 provisions of such section shall be the same as those in  
15 existence prior to amendment by this act, and to that end  
16 section 704.04, Florida Statutes, as it existed prior to  
17 amendment by this act, is reenacted to read:

18 704.04 Judicial remedy and compensation to servient  
19 owner.--When the owner or owners of such lands across which a  
20 statutory way of necessity under s. 704.01(2) is claimed,  
21 exclusive of the common-law right, objects or refuses to  
22 permit the use of such way under the conditions set forth  
23 herein or until she or he receives compensation therefor,  
24 either party or the board of county commissioners of such  
25 county may file suit in the circuit court of the county  
26 wherein the land is located in order to determine if the claim  
27 for said easement exists, and the amount of compensation to  
28 which said party is entitled for use of such easement. Where  
29 said easement is awarded to the owner of the dominant  
30 tenement, it shall be in compliance with s. 704.01(2) and  
31 shall exist so long as such easement is reasonably necessary

1 for the purposes stated herein. The court, in its discretion,  
2 shall determine all questions, including the type, duration,  
3 extent, and location of the easement, the amount of  
4 compensation, and the attorney's fees and costs to be awarded  
5 to either party for unreasonable refusal to comply with the  
6 provisions of s. 704.01(2) provided that if either of said  
7 parties so requests in her or his original pleadings, the  
8 amount of compensation may be determined by a jury trial. The  
9 easement shall date from the time the award is paid.

10           Section 5. This act shall take effect upon becoming a  
11 law.

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