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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.

11
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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