Chapter 376

1989 EDITION

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GENERAL PROVISIONS

376.005 "County court" defined. As used in this chapter, unless the context requires otherwise, "county court" means the governing body of the county, whether it is a county court or board of county commissioners.

376.105 [Repealed by 1979 c.862 §12]

376.110 [Repealed by 1979 c.862 §12]

376.115 [Repealed by 1979 c.862 §12]

376.120 [Repealed by 1979 c 862 §12]

376.125 [Repealed by 1979 c 862 §12]

376.130 [Repealed by 1979 c.862 §12]

376.135 [Repealed by 1979 c 862 §12]

376.140 [Repealed by 1971 c.743 §432]

376.145 [Repealed by 1979 c.862 §12]

STATUTORY WAYS OF NECESSITY

376.150 Definitions for ORS 376.150 to 376.200. As used in ORS 376.150 to 376.200:

(1) "Public road" means the entire right of way of any road over which the public has the right of use or any right of way held by the state or a political subdivision of the state for road purposes that is not open for public use.

(2) "Way of necessity" means:

(a) A road established under ORS 376.150 to 376.200 to provide motor vehicle access from a public road to land that would otherwise have no motor vehicle access; or

(b) A route established under ORS 376.150 to 376.200 to provide utility service access from an existing service location to a service point that would otherwise have no utility service access. [1979 c.862 §1; 1989 c.674 §1]

376.155 Petition to establish way of necessity; contents; requirements. (1) To establish a way of necessity under ORS 376.150 to 376.200, a landowner shall file a petition with the governing body of the county in which the land is located.

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

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

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

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

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

(e) Evidence that either:

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

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

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

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

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

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

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

(k) Evidence that the petitioner does not have any enforceable access to a public road. [1979 c.862 §2]

376.160 Notice to landowners; investigation of proposed way; report to county governing body. (1) Upon receipt of a petition for a way of necessity filed under ORS 376.155, a county governing body shall:

(a) Provide for service of the petition on all persons owning land across which the way of necessity could be located; and

(b) Direct the county engineer, county surveyor or other persons appointed by the governing body to investigate the proposed way of necessity and to submit a written report to the county governing body.

(2) The report under subsection (1) of this section shall include:

(a) Possible alternate routes for ways of necessity to the property;

(b) A determination of whether the proposed way of necessity meets the requirements under ORS 376.150 to 376.200;

(c) The reasonableness of the way of necessity proposed in the petition; and

(d) A recommendation for a specific location and width for a way of necessity.

(3) Upon receipt of the report under subsection (2) of this section, the county governing body shall:

(a) Provide a copy of the report to the petitioner; and

(b) Serve a copy of the petition and report on all persons owning land across which the way of necessity is proposed to be located under the report or the petition.

(4) Service of the petition and report under this section shall be accomplished in the manner provided for service of summons in an action at law. If the report includes a recommendation for a route different than the route proposed in the petition, service on the affected parties shall include a copy of the petition. [1979 c.862 §3]

376.165 Deposit to cover county expenses. Upon receipt of a petition for a way of necessity filed under ORS 376.155, a county governing body may require the petitioner to deposit with the county an amount of money or other security to use for payment of county expenses incurred in the procedure for establishing the way of necessity or to assure that the expenses will be paid. If a deposit of money is required by the governing body, the deposit may be used to pay expenses and shall be deducted from the expenses ordered to be paid under ORS 376.175. [1979 c.862 §3a]

376.170 Filing of answer by landowner; reply to answer by petitioner. (1) Any person owning land across which a way of necessity is proposed to be established under ORS 376.150 to 376.200 may file an answer controverting any matter in the petition or report and alleging any new matter relevant to the proceedings. An answer filed under this subsection must be filed within 30 days after receipt of service of the petition and report. An answer shall be filed with the county governing body. The county governing body shall provide for service of the answer upon the petitioner in the manner provided for service of summons in an action at law.

(2) If an answer is filed under this section, the petitioner may file a reply controverting any matter presented in the answer. A reply filed under this section must be filed within 10 days after receipt of service of the answer by the petitioner. A reply shall be filed with the county governing body. The county governing body shall provide for service of the reply upon the person filing the answer in the manner provided for service of summons in an action at law. [1979 c.862 §4]

376.175 Order granting or denying way of necessity; contents; liability for costs; appeal. (1) Upon consideration of the matters and issues presented under ORS 376.150 to 376.200, the county governing body shall determine whether or not a need has been demonstrated for the granting of a way of necessity under ORS 376.150 to 376.200 and shall enter an order granting or denying the way of necessity.

(2) Any order entered under this section shall:

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

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

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

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

(e) Direct the petitioner to pay costs and reasonable attorney fees incurred by each owner of land whose land was subject to the petitioner's action for a way of necessity under ORS 376.150 to 376.200;

(f) Establish the amount of compensation due to any owner of land across which any way of necessity has been established and direct the petitioner to pay the compensation; and

(g) Establish the costs incurred by the county in the procedures for the way of necessity under ORS 376.150 to 376.200 and direct the petitioner to reimburse the county for those costs not already paid by petitioner.

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

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

(5) Any party to the action for a way of necessity may contest any part of the order of the county governing body in an appeal filed with the circuit court within 30 days after entry of the order of the county governing body. [1979 c.862 §5; 1989 c.674 §2]

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

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

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

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

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

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

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

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

(8) Not be established if the property for which the way of necessity is sought has an existing enforceable access to a public road;

(9) Not be established if the petitioner for the way of necessity could acquire an easement for access to a public road through other legal action;

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

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

(12) Not be established for any land if the owner of the land had knowingly eliminated access to all public roads from the land by the sale of other land owned by the landowner. [1979 c.862 §6]

376.185 Way of necessity over public land. (1) A way of necessity may not be established under ORS 376.150 to 376.200 across land owned by the state or a political subdivision of the state without the consent of the governing body of the political subdivision or of the appropriate agency of the state. The governing body of a political subdivision of this state and any agency of the state shall not unreasonably withhold consent required under this subsection.

(2) Whenever a way of necessity is sought over land owned by the state or a political subdivision of the state, a copy of the petition for the way of necessity, of the county report and of the notice of hearing shall be forwarded by certified mail to:

(a) If the political subdivision owns the land, the governing body of the political subdivision.

(b) If the state owns the land, to the Secretary of State and to each agency of the state that has use or control of the land. [1979 c.862 §7]

376.190 Responsibility for maintenance of way of necessity; alteration limited. (1) A way of necessity that is established under ORS 376.150 to 376.200 shall be maintained and kept passable by the person owning the land for which the way of necessity is established. This subsection does not require the person to provide for maintenance of the way of necessity for uses or persons not specifically provided in the order establishing the way of necessity.

(2) A way of necessity established under ORS 376.150 to 376.200 shall not be altered or vacated except by the governing body of the county in which it is located and in a manner provided by law for the alteration or vacation of a public road.

(3) No county shall be required to work, improve, maintain or repair a way of necessity. [1979 c.862 §8]

376.195 Subsequent partition of land receiving way of necessity requires government approval. Land for which a way of necessity is established under ORS 376.150 to 376.200 shall not be subsequently partitioned without the approval of the city or county governing body which has partitioning authority. [1979 c.862 §9]

376.200 Substitution by ordinance of circuit court for county governing body jurisdiction. (1) Notwithstanding any provision of ORS 376.150 to 376.200, a county governing body may adopt an ordinance removing the county governing body from jurisdiction over the establishment of ways of necessity under ORS 376.150 to 376.200.

(2) If the county governing body adopts an ordinance described in subsection (1) of this section, the circuit court of that county shall have jurisdiction of the establishment of ways of necessity for that county. A court with jurisdiction of the establishment of ways of necessity under this section shall follow the procedures for establishment of a way of necessity provided under ORS 376.150 to 376.200.

(3) Notwithstanding ORS 376.175, if jurisdiction for establishment of ways of necessity is in the circuit court as provided under this section, an appeal from the decision of the court shall be to the Court of Appeals. [1979 c.862 §10]

376.205 [Repealed by 1981 c.153 §79]

376.210 [Repealed by 1981 c.153 §79]

376.215 [Repealed by 1981 c.153 §79]

376.220 [Repealed by 1981 c.153 §79]

FOREST ROADS

376.305 Policy and purpose of Act. (1) It is declared that a substantial part of the forest resources of this state are now left unharvested and are lost by reason of the excessive cost of transportation thereof to market; that substantial forest areas can be economically managed, harvested and the products thereof transported to market only by use of certain county and public roads which the counties of this state are unable to construct, improve and maintain so as to enable their safe and economical use for such purposes.

(2) It is declared to be the public policy of this state to conserve and develop its natural resources, to encourage and facilitate the transportation of products of the forest and the salvage and utilization of such products now being wasted, and to develop and improve certain county and other public roads for such purposes.

376.310 Definitions for ORS 376.305 to 376.390. As used in ORS 376.305 to 376.390:

(1) "Forest road" means any county or public road, or part thereof, outside the corporate limits of a city, which is within or extends into or toward a mountainous or timbered area, and which is under the control and supervision of a county court of this state.

(2) "Contract forest road" means a forest road improved or maintained pursuant to a contract made under ORS 376.305 to 376.390.

(3) "Logging operator" means any person having the right to cut and remove timber or forest products in this state, or who is engaged or desirous of engaging in this state in the transportation of forest products, by motor vehicle, to market or processing plant.

(4) "Forest road contractor" means a logging operator who has entered into a contract under ORS 376.305 to 376.390 to improve or maintain, or improve and maintain, a contract forest road.

(5) "Motor vehicle" includes any motor vehicle with or without a trailer or semi-trailer.

(6) "Person" means any person, firm or corporation, or group or combination thereof.

376.315 Application to become forest road contractor. (1) Any logging operator desiring to become a forest road contractor may make application to the county court having jurisdiction and control over a forest road, to improve or maintain, or improve and maintain, such road.

(2) The application shall set forth:

(a) A description of the road and the termini thereof.

(b) If the applicant proposes to improve the road, a general statement of the improvements proposed to be made.

(c) If the applicant proposes to maintain the road, a general description of the maintenance work proposed to be done.

(3) The application shall be verified and signed by the applicant and filed in the office of the county clerk, together with an affidavit showing service thereof, either personally or by registered mail, on the Public Utility Commission and on the Department of Transportation.

376.320 Hearing on application; posting, publishing, serving and proof of notice. (1) The county court shall:

(a) Fix a date for hearing the application.

(b) Cause a notice of the hearing to be posted at the place where the county court sessions are held and at three public places in the vicinity of the forest road specified in the application, for at least 30 days immediately prior to the date set for hearing.

(c) Cause notice of the hearing to be published in a newspaper published in the county and having general circulation therein, but if there is no such newspaper published in the county, then in any newspaper having general circulation in the county, for not less than once a week for two weeks immediately prior to the date set for the hearing.

(2) A copy of the notice shall be served personally or by registered mail on the Public Utility Commission and on the Department of Transportation at least 15 days prior to the date set for hearing.

(3) Proof that the notice has been posted and served shall be made by affidavit and filed in the proceeding.

376.325 Signing and contents of notice. The notice of hearing shall be signed by the county clerk and shall state:

(1) The date the application was filed.

(2) The name of the applicant.

(3) The description of the forest road proposed to be improved or maintained, or both.

(4) The proposal for improvement or maintenance, or both, as set forth in the application.

(5) The time and place of hearing.

(6) That all persons interested may appear and be heard for or against the application.

376.330 Order approving application; service of order. After the hearing, the county court may, in its discretion, approve or disapprove the application. If the applica-

tion is approved, a copy of the approving order together with a copy of the findings of the county court shall be served by the county clerk by registered mail within 10 days after the order is made, upon the Public Utility Commission and the Department of Transportation. The county clerk shall file in the proceeding the certificate of such service.

376.335 Contracting with applicant. Any county court that has approved any such application may contract with the applicant, in accordance with ORS 376.305 to 376.390, and without advertisement for bids, for the improvement or maintenance, or both, of the forest road described in the application. The terms of the contract as to specifications of the work shall not be limited by the proposal for improvement or maintenance as contained in the application.

376.340 Bond and insurance of forest road contractor. (1) Before execution of any contract under ORS 376.305 to 376.390, the forest road contractor shall execute and file with the county clerk a performance bond in an amount to be fixed by the county court.

(2) The forest road contractor shall furnish, and have in force during the entire term of the contract, public liability and property damage insurance covering the operation and the operation of agents and subcontractors of the forest road contractor in the improvement, maintenance and use of the contract forest road in any amount that may be fixed in the contract, but the public liability insurance shall be for an amount of not less than $50,000 for bodily injuries to or death of one person and, subject to that minimum amount for each person, not less than $100,000 for bodily injuries to or death of more than one person in any one accident, and the property damage insurance shall be for an amount of not less than $5,000 for injury to or destruction of property in any one accident. [Amended by 1953 c.370 §5, 1957 c 650 §14; 1983 c.740 §121]

376.345 Contents of forest road contract. Every contract entered into pursuant to ORS 376.305 to 376.390 shall:

(1) Describe the road and the termini thereof.

(2) Specify the width of the roadbed and contain reasonably complete specifications, prepared by the county roadmaster or other competent person, of the improvement and maintenance work to be done.

(3) Specify the time within which the improvement work other than maintenance shall be completed.

(4) Contain such provisions pertaining to maintenance as may be agreed upon by the parties.

(5) Obligate the forest road contractor to furnish all labor and materials required for the work the contractor has contracted to do.

(6) Provide that the same rights and privileges on the contract forest road as are available to the forest road contractor are available to any other logging operator:

(a) Upon approval by the county court;

(b) Upon the logging operator furnishing insurance as provided in ORS 376.340;

(c) Upon the logging operator reimbursing the forest road contractor for an equitable portion of the construction costs, if any, borne by the forest road contractor; and

(d) Upon the equitable sharing of the logging operator with the forest road contractor in the costs of maintaining the road, provision being made for either the specific rates therefor per 1,000 feet board measure of timber or equivalent of forest products transported over the road or, in the alternative, a formula for determining such rates with a provision for arbitration, in accordance with ORS 36.300 to 36.365, in the event of disagreement between the forest road contractor and another logging operator respecting the application of the formula.

376.350 Filing copies of forest road contract. One copy of the contract shall be filed with the county clerk, one with the Public Utility Commission and one with the Department of Transportation.

376.355 Limitations on using motor vehicles to transport forest products over forest road; regulations and permits for crossing state highways. (1) During such term as may be specified in the contract, the forest road contractor and agents and subcontractors of the forest road contractor have the right and privilege to:

(a) Use and operate over the contract forest road, motor vehicles limited as to wheel base, weights, dimensions, tire widths and tire surfaces only as specified in the contract.

(b) Transport forest products upon such motor vehicles over the road, with loads limited as to gross weights, axle load weights, tire load weights, and load dimensions and heights only as specified in the contract.

(2) Whenever any forest road contractor operates any motor vehicle having a size or weight prohibited by or in excess of the limitations contained in any law pertaining to state highways, on a contract forest road which crosses a state highway, the Department of Transportation may adopt rules and regulations and issue permits for said motor vehicle to cross said state highway in the use

of such contract forest road. Such rules and regulations and such permits may include, but need not be limited to, provisions for reinforcing and strengthening the highway and for the installation of signs and signals, and such other requirements as the Department of Transportation may deem necessary for the preservation of the highway and for the safety and best interest of the public. All construction and installations under such permits shall be under the supervision of the Department of Transportation and at the expense of the forest road contractor. [Amended by 1953 c.370 §5]

376.360 Signs giving notice of certain vehicles on forest road. In the event the forest road contractor is authorized by the provisions of the contract to operate vehicles or combinations of vehicles, including any load thereon, of any size or description not otherwise authorized by law, the county court shall erect and maintain signs giving notice thereof in a conspicuous manner and placed at each end of the forest road or section of forest road covered by the contract, and at such other places as may be necessary to inform and warn the public.

376.365 Persons having rights under forest road law and contract. During the term of the forest road contract, all exemptions, privileges and rights granted or provided for by ORS 376.305 to 376.390, and by the provisions of the contract made pursuant thereto, are limited to the forest road contractor, the agents and subcontractors of the forest road contractor, and to such other logging operators as may meet the provisions required to be included in the contract by ORS 376.345 (6). This section does not, however, prevent the use of the forest contract road by the general public. [Amended by 1953 c.370 §5]

376.370 Supervision over forest road work by roadmaster. (1) All improvement and maintenance work done pursuant to a forest road contract shall be under the supervision of the county roadmaster of the contracting county.

(2) On request of the forest road contractor, the county roadmaster shall inspect any completed segment of the contract forest road, and if the county roadmaster determines the work to be in compliance with the contract the county roadmaster shall approve the completion in writing, deliver a copy of the approval to the contractor and file a copy with the county clerk. Except in case of fraud, the approval of the county roadmaster shall be conclusive proof that the work approved is in compliance with the contract.

376.375 Contract liability of forest road contractor. The liability of any forest road contractor for failure to improve or maintain the contract forest road or any bridge or culvert thereon in accordance with the contract is limited to the contracting county.

376.380 Assignment of forest road contract. Any forest road contractor may assign the forest road contract in its entirety, with approval of the contracting county court and not otherwise. A copy of each assignment shall be filed with the county clerk. A copy of the assignment together with a copy of the resolution of the county court approving the assignment shall be delivered or sent by registered mail to the Public Utility Commission and the Department of Transportation.

376.385 Paying over fines, penalties and forfeited bail to county treasurer. All fines and penalties collected, or bail forfeited, under ORS 376.990 (2) and (3), shall be paid by the court or judicial officer collecting the same to the county treasurer of the county within which the violation occurred. The county treasurer shall credit moneys so received to the general road fund of the county.

376.390 Payment of taxes and fees by forest road contractor. Nothing in ORS 376.305 to 376.390 relieves the forest road contractor or agents or subcontractors of the forest road contractor from payment of any taxes or fees prescribed by law, except that, with respect to a motor vehicle operated upon a contract forest road by a forest road contractor, or agent or subcontractor of the forest road contractor, the road tax mileage fees prescribed by ORS 767.815 to 767.830 shall be assessed upon the declared combined weight of the motor vehicle or 76,000 pounds, whichever is less. [Amended by 1953 c.370 §5]

CONDEMNATION OF LAND FOR FOREST PRODUCT WAYS

376.505 Filing statement of route and bond; right of entry. Any person, firm or corporation who requires land for transportation of the raw products of the forest may file with the county clerk of the county in which the land is located:

(1) A statement showing the approximate route of any proposed road or railway and a general description of the tract which the road or railway may travel.

(2) At the time of filing the statement, a bond in such sum as may be fixed by order of the county court, conditioned upon the payment to the owners of the lands required for the road or railway of any and all damage which the owners may sustain by reason of entry upon the land for the survey or location of the road or way.

When the bond has been filed, such person, firm or corporation shall have the right to enter upon the tract for the purpose of examining, locating or surveying the line of the road or logging railroad.

376.507 Definition of "transportation of the raw products of the forest." As used in ORS 376.505 to 376.540 "transportation of the raw products of the forest" includes ingress to and egress from forest land solely for the purpose of management, protection, growth and conservation of forest crops by thinning, reseeding, brush control and other forest management operations. [1975 c 723 §2]

376.510 Right to acquire and condemn land for logging road. Any such person, firm or corporation has the right to acquire and own all lands reasonably necessary for the logging road or way to promote the transportation of logs or the raw products of the forest. If such person, firm or corporation is unable to agree with the owners of the land over which the logging railroad is necessary, as to the amount of compensation to be paid therefor, such person, firm or corporation has the right to condemn so much of the land necessary for the logging railroad, road or ways as may be necessary for the use thereof, and may maintain the suit for condemnation in the circuit court of the county wherein the lands are located. No land shall be taken until compensation has been assessed and tendered.

376.515 Property subject to appropriation. No more lands shall be appropriated under ORS 376.505 to 376.540 than are reasonably necessary for the purposes specified therein. No building nor the land upon which it is situated, which is exempt from execution as a homestead under the laws of the state, nor any land belonging to the homestead owner within 100 feet of the building, shall be so appropriated.

376.520 Condemnation procedure. Procedure for condemnation under ORS 376.505 to 376.540 shall be as set forth in ORS chapter 35. [Amended by 1971 c.741 §23]

376.525 Assessment of damages. In assessing damages under ORS 376.510, full compensation shall be allowed for the value of the land appropriated and all other injury and damage which the owner may suffer by reason of the appropriation of the land.

376.530 Fencing appropriated land. The person, firm or corporation appropriating land under ORS 376.505 to 376.540, and the successors and assigns of the person, firm or corporation, shall fence with a good and suitable fence both sides of the lands appropriated, in the event the lands are used for agricultural purposes, and shall take such other means and precautions reasonably necessary to protect the adjoining lands not appropriated from damage or injury by reason of the use of the lands appropriated.

376.535 Use of appropriated property; reversion on disuse. (1) Any property acquired under ORS 376.505 to 376.540 shall be used exclusively for the purposes set forth therein or such incidental purposes as may be necessary to the continued carrying out of such purposes.

(2) Whenever the use of property as contemplated in ORS 376.505 to 376.540 ceases for a period of two years, it shall revert to the original owner. or the heirs or assigns of the original owner, but in assessing damages the amount allowed shall not be in any manner lessened or decreased by reason of the possibility that the lands may so revert to their original owner.

(3) The limitations set out in this section shall not apply to or run against any interest acquired by the state.

376.540 Logging roads. Any logging road which is necessary for the transportation of a single tract of timber is within ORS 376.505 to 376.540, whether it is a common carrier or otherwise. Such road is not under the jurisdiction of the Public Utility Commission unless the owners thereof declare it a common carrier.

MISCELLANEOUS WAYS

376.605 Construction of trails and bridle paths to Pacific shore. (1) The Department of Transportation may establish, lay out, construct and improve public pedestrian trails and bridle paths not exceeding 30 feet in width, connecting legally established streets, roads and public parks with the shore of the Pacific Ocean.

(2) For the purpose set forth in subsection (1) of this section, the department may acquire real property or any interest therein by purchase, donation, agreement or exercise of the power of eminent domain. The provisions of ORS chapter 35 are applicable to proceedings of the department authorized by this subsection. [Amended by 1971 c.741 §26]

376.610 [Repealed by 1981 c.153 §79]

376.615 [Repealed by 1981 c.153 §79]

376.620 Skyline, logging line, ferry skyline or cable footbridge; authorization and regulation by land board. (1) When authorized by the Division of State Lands, it is lawful for any person, firm or corporation to construct, maintain and operate a skyline, high lead logging line, ferry skyline or cable footbridge across any navigable river, bay, inlet or other navigable waters within the state, not inconsistent with any Act of Con-

gress regulating the construction of bridges across navigable waters. The structures shall be so constructed as not to interfere unnecessarily with the navigation of such navigable waters.

(2) The Division of State Lands may make and enforce such regulations and restrictions as it deems necessary to carry out the purposes of this section and may make reasonable charges for any services rendered in connection therewith.

PEDESTRIAN MALLS

376.705 Definitions for ORS 376.705 to 376.825. Unless the context otherwise requires, the definitions contained in this section shall govern the construction of ORS 376.705 to 376.825.

(1) "City" includes every county, city, and city and county within this state. "The city" means the particular county; city, or city and county, acting pursuant to ORS 376.705 to 376.825.

(2) "Legislative body" means the legislative body of the city.

(3) "Street" as used in the definitions of the terms "city streets," "mall intersection" and "intersecting streets," defined in subsections (4), (6) and (7) of this section, means any public street, road, highway, alley, land, court, way or place of any nature open to the use of the public.

(4) "City street," as used with regard to streets located within a city or city and county, means any street located within the city or city and county, except a freeway, state highway, or county highway. "City street," as used with regard to streets located within a county, means any street, located within the county, except a throughway as defined in ORS 374.010 or state highway as defined in ORS 373.010.

(5) "Pedestrian mall" means one or more city streets, or portions thereof, on which vehicular traffic is or is to be restricted in whole or in part and which is or is to be used exclusively or primarily for pedestrian travel.

(6) "Mall intersection" means any intersection of a city street constituting a part of a pedestrian mall with any street, which intersection is itself part of the pedestrian mall.

(7) "Intersecting street" means any street which meets or crosses a pedestrian mall at a mall intersection but includes only those portions thereof on either side of a mall intersection which lie between the mall intersection and the first intersection of the intersecting street with a public street or highway open to vehicular traffic.

(8) "Assessment roll" means the assessment roll or rolls used by the county for purposes of city ad valorem taxes on real property.

(9) "Improvements" means the improvements referred to in ORS 376.720 (1). [1961 c.666 §2]

376.710 Legislative findings; short title. (1) The Legislative Assembly hereby finds and declares that in certain areas in cities, and particularly in retail shopping areas thereof, there is need to separate pedestrian travel from vehicular travel and that such separation is necessary to protect the public safety or otherwise to serve the public interest and convenience. The Legislative Assembly further finds and declares that such objective can, in part, be accomplished by the establishment of pedestrian malls pursuant to ORS 376.705 to 376.825.

(2) ORS 376.705 to 376.825 may be cited as the Pedestrian Mall Law of 1961. [1961 c.666 §§1, 3]

376.715 Construction of Pedestrian Mall Law; validity of proceedings. (1) ORS 376.705 to 376.825 and all of their provisions shall be liberally construed to the end that their purpose may be effective.

(2) Any proceedings taken pursuant to ORS 376.705 to 376.825 shall not be held invalid for failure to comply with the provisions of ORS 376.705 to 376.825, if the acts done and proceedings taken are not invalid under the State or Federal Constitutions. [Enacted as part of 1961 c.666 §5]

376.720 Powers of city with respect to pedestrian mall. (1) The legislative body of a city shall have the power:

(a) To establish pedestrian malls.

(b) To prohibit, in whole or in part, vehicular traffic on a pedestrian mall.

(c) To pay, from general funds of the city or other available moneys or from the proceeds of assessments levied on lands benefited by the establishment of a pedestrian mall, the damages, if any, allowed or awarded to any property owner by reason of the establishment of a pedestrian mall.

(d) To construct on city streets which have been or will be established as a pedestrian mall improvements of any kind or nature necessary or convenient to the operation of such city streets as a pedestrian mall, including but not limited to paving, sidewalks, curbs, gutters, sewers, drainage works, street lighting facilities, fire protection facilities, flood protection facilities, water distribution facilities, vehicular parking areas, retaining walls, landscaping, tree planting, child care facilities, display facilities, information booth, public assembly fa-

cilities and other structures, works or improvements necessary or convenient to serve members of the public using such pedestrian mall, including the reconstruction or relocation of existing city-owned works, improvements or facilities on such city streets.

(e) To pay, from general funds of the city or other available moneys or from the proceeds of assessments levied on property benefited by any such improvements, the whole or any portion of the cost of such improvements.

(f) To do any and all other acts necessary or convenient for the accomplishment of the purposes of ORS 376.705 to 376.825, including the power to rent, lease or license to any individual firm or corporation any portion of the pedestrian mall for service concessions, commercial uses or otherwise, providing that in any term of use exceeding 60 days, the city shall first advertise for bids therefor by publication not less than once a week for two consecutive weeks in a newspaper of general circulation in the city, making two publications thereof.

(2) The powers granted in ORS 376.705 to 376.825 to prohibit, in whole or in part, vehicular traffic on any city street shall be in addition to and not limited by the powers granted by any other law. [1961 c.666 §4; subsection (2) enacted as part of 1961 c.666 §5; 1971 c.506 §1]

376.725 Resolution for establishment of mall; general contents of resolution. When the legislative body shall determine that the public interest and convenience require the establishment of a pedestrian mall and that vehicular traffic will not be unduly inconvenienced thereby, it may adopt a resolution declaring its intention to establish such pedestrian mall. Such resolution shall contain:

(1) The determination and declaration referred to above.

(2) A general description of the city streets, or portions thereof, which are proposed to be established as a pedestrian mall.

(3) A general description of the mall intersections.

(4) A general description of the intersecting streets.

(5) A statement that the legislative body proposes to adopt an ordinance prohibiting, in whole or in part, vehicular traffic on such pedestrian mall. If vehicular traffic is proposed to be prohibited only in part, the resolution shall also contain a general statement of the exceptions proposed to be made. Such exceptions may include exceptions in favor of public, emergency, utility and other classes of vehicles, may include exceptions in favor of all or certain classes of vehicles during certain days or during portions of days, and may include other exceptions of any kind or nature.

(6) A general statement of the source or sources of moneys proposed to be used to pay damages, if any, allowed or awarded to any property owner by reason of the establishment of the pedestrian mall.

(7) A day, hour and place for the hearing by the legislative body of protests and objections to the establishment of the proposed pedestrian mall, and a statement that any and all persons having any objection to the establishment of the proposed pedestrian mall may file a written protest with the city recorder at any time not later than the hour so fixed for the hearing.

(8) A statement that any person owning or having any legal or equitable interest in any real property which might suffer legal damage by reason of the establishment of the proposed pedestrian mall may file a written claim of damages with the city recorder at any time not later than the hour so fixed for hearing; that such written claim must describe the real property as to which the claim is made, must state the exact nature of the claimant's interest therein, must state the nature of the claimed damage thereto, and must state the amount of damages claimed. [1961 c.666 §6]

376.730 Description of proposed mall and intersecting streets. In such resolution any street may be described by referring thereto by its lawful or official name, or the name by which it is commonly known, and the pedestrian mall, the mall intersections and the intersecting streets may be described by reference to a map or plat thereof on file in the office of the city recorder. [1961 c.666 §7]

376.735 Contents of resolution when landowners to be paid for damages by assessments on benefited property. In such resolution the legislative body may propose to pay the whole or any part of damages based on claims filed pursuant to ORS 376.755 (2), if any, allowed or awarded to any property owner by reason of the establishment of the pedestrian mall from the proceeds of assessments levied upon lands benefited by the establishment of the pedestrian mall. In such cases the resolution shall also contain:

(1) General description of the district (which may consist of noncontiguous portions) within which lie the lands deemed by the legislative body to be benefited by the establishment of the proposed pedestrian mall. Such district may be described by metes and bounds.

(2) A statement that an assessment will be levied pursuant to ORS 376.705 to 376.825 to pay the whole or a stated portion of the damages based on claims filed pursuant to ORS 376.755 (2), if any, allowed or awarded to any property owner by reason of the establishment of such pedestrian mall and the costs and expenses in connection with proceedings or actions taken pursuant to ORS 376.705 to 376.825.

(3) If bonds are to be issued, a statement that bonds to represent unpaid assessments will be issued, and the interest rate, or maximum interest rate, and term, or maximum term. of any such bonds. [1961 c.666 §8]

376.740 Contents of resolution when improvements are proposed. If, in connection with the initial establishment of a pedestrian mall, the legislative body proposes to make any improvements of the kind or type referred to in ORS 376.720 (1)(d), such resolution shall also contain:

(1) A general description of the improvements proposed to be made. Such description may be made (but is not required to be made) in any manner permitted or provided in any law under which such improvements are to be made or financed.

(2) A general statement of the source or sources of moneys proposed to be used to pay the costs and expenses of such improvements. [1961 c.666 §9]

376.745 Resolution to be published and posted. (1) The resolution of intention shall be published in a newspaper of general circulation published within the county, city or city and county, as the case may be. The first publication shall be not less than 60 days prior to the date fixed therein for hearing. In a city where no such newspaper is published, the resolution shall instead be so published in a newspaper of general circulation published in the county in which the city is located.

(2) Copies of the resolution headed "Notice of Intention to Establish a Pedestrian Mall" in letters at least one-half inch in height shall be posted not more than 300 feet apart as follows:

(a) On all city streets, or portions thereof, proposed to be established as a pedestrian mall.

(b) On all intersecting streets.

(c) If assessments are to be levied as contemplated by ORS 376.735, then upon all open streets within the district described in the resolution pursuant to such section.

Such copies shall be posted not less than 60 days prior to the hearing. [1961 c 666 §§10, 11]

376.750 Copies of resolution to be mailed to affected persons. (1) A copy of the resolution shall be mailed, postage prepaid, not less than 60 days prior to the hearing to each person to whom any of the following described lands is assessed as shown on the last equalized assessment roll, at the address of the person as shown upon such roll, and to any person, whether owner in fee or having a lien upon, or legal or equitable interest in, any of such lands whose name and address and a designation of the land in which the person is interested is on file in the office of the city clerk or county clerk, as the case may be. Such lands are as follows:

(a) All parcels of land abutting upon any portion of the pedestrian mall or any portion of any intersecting street.

(b) If assessments are to be levied as contemplated by ORS 376.735, then all parcels of land within the assessment district described in the resolution pursuant to such section.

(2) The legislative body may determine that such resolution shall also be mailed to such other persons as it may specify. [1961 c.666 §12]

376.755 Objections to mall; claims for damages; right to damages not created. (1) Not later than the hour set for hearing any interested person may, severally or with others, file with the city recorder written objection to the establishment of the proposed pedestrian mall or to the extent of any district described pursuant to ORS 376.735, or both. Any protest or objection may be withdrawn at any time by written notice of such withdrawal filed with the city recorder with the same effect as if it had never been made.

(2) Not later than the hour set for hearing any person owning, or having any legal or equitable interest in, any real property which might suffer legal damage by reason of the establishment of the proposed pedestrian mall may file with the city recorder a written claim of damages. Such written claim must describe the real property as to which the claim is made, must state the exact nature of the claimant's interest therein, must state the nature of the claimed damage thereto, and must state the amount of damages claimed. Any such claim may be withdrawn by the claimant at any time by written withdrawal with the same effect as if it had never been filed.

(3) Anything in ORS 376.705 to 376.825 to the contrary notwithstanding, nothing in ORS 376.705 to 376.825 shall be construed or interpreted as creating any right in any person to damages or compensation by reason

of the establishment of a pedestrian mall, it being the intention of the Legislative Assembly in enacting ORS 376.705 to 376.825 to provide an orderly method for the determination and payment only of such damages and compensation as are required by the Constitutions of the State of Oregon and the United States of America. In this connection the Legislative Assembly hereby expressly declares that it is its intention that to the extent to which the establishment of a pedestrian mall is justifiable as an exercise of the police power for which no compensation is constitutionally required, no damages or compensation shall be allowed in any action. [1961 c.666 §§13, 14, 24]

376.760 Effect of objections by landowners. (1) If the owners of lands abutting on the proposed pedestrian mall representing 10 percent of the frontage on the proposed pedestrian mall have made written objection to the establishment of the proposed pedestrian mall, the legislative body shall so find and shall terminate the proceedings for such establishment. In such event no proceeding under ORS 376.705 to 376.825 for the establishment of the same or substantially the same pedestrian mall shall be commenced within one year after such termination.

(2) If assessments are to be levied as contemplated by ORS 376.735, then if the owners of more than 10 percent of the area of land included within the district described in the resolution of intention and subject to assessment have made written objection to the establishment of the proposed pedestrian mall, the legislative body shall so find and in that event the legislative body may continue with proceedings for the establishment of the pedestrian mall but shall have no power to make any assessment upon benefited property to pay damages. In such event no proceeding under ORS 376.705 to 376.825 for the levy of assessments upon benefited property to pay damages in connection with the establishment of the same or substantially the same pedestrian mall shall be commenced within one year after such finding. [1961 c.666 §§16, 17]

376.765 Changing boundaries when assessments to be levied under ORS 376.735; notice; objections. (1) If assessments are to be levied as contemplated by ORS 376.735, then at the hearing the legislative body may change the boundaries of the proposed district by adding thereto land which in its opinion will be benefited by the establishment of the pedestrian mall or by excluding from the district lands which in its opinion will not be so benefited. If the legislative body proposes any such change it shall take proceedings as required by this section and shall continue the hearing to the time fixed for hearing objections to the proposed change.

(2) No such change shall be made except after notice of intention to do so, given by at least one insertion in the newspaper in which the resolution of intention was published, describing the proposed change and specifying the time for hearing objections, which shall not be less than 30 days after publication of the notice. If the change proposed is one to include additional land in the district, a copy of such notice shall be mailed to each person to whom land proposed to be added is assessed as shown on the last equalized assessment roll, at the address of the person as shown on such roll, and to any person, whether owner in fee or having a lien upon, or legal or equitable interest in, any such lands whose name and address and a designation of the land in which the person is interested is on file in the office of the county clerk. Such notice shall be mailed at least 25 days prior to the time set for hearing objections.

(3) Written objection to any proposed changes may be filed with the city recorder at any time up to the hour fixed for hearing objections to such changes. [1961 c.666 §18]

376.770 Allowing claims for damages; payment. (1) At the hearing on the resolution of intention the legislative body may allow any claim for damages made pursuant to ORS 376.755 (2). Any such allowance shall be for the full amount of damages claimed in the written claim except that the legislative body, with the written consent of the claimant, may allow a claim for a lesser amount.

(2) The right of any claimant to payment of the amount of any allowed claim shall be contingent upon the final establishment of the pedestrian mall but all allowed claims must be paid by the city, from such source as the legislative body may determine, before vehicular traffic is prohibited, in whole or in part, on the pedestrian mall, pursuant to ORS 376.705 to 376.825. [1961 c.666 §20]

376.775 Hearing objections, claims and protests; waiver; decision; continuations. (1) At the hearing all objections and protests shall be heard and considered, and all claims shall be heard and considered.

(2) Any objections or protests, whether to the things proposed by the resolution of intention or to any changes proposed pursuant to ORS 376.765, not made at the time and in the manner provided by ORS 376.705 to 376.825 are deemed voluntarily waived, and the proceedings under ORS 376.705 to 376.825 shall not be attacked on any ground not stated in a written objection filed as provided in ORS 376.705 to 376.825.

(3) Except in the case of a majority protest, as provided in ORS 376.760, the legislative body may sustain or deny any or all objections or protests and its determination is final.

(4) The hearing may be continued from time to time by order entered on the minutes. [1961 c.666 §§15, 19]

376.780 Resolution after hearing; fixing boundaries. (1) Following the conclusion of the hearing, the legislative body shall by resolution either abandon the proceeding taken pursuant to ORS 376.705 to 376.825 or determine that the pedestrian mall shall be established.

(2) If assessments are to be levied as contemplated by ORS 376.735, then in the resolution provided for in subsection (1) of this section, the legislative body shall fix and establish the boundaries of the district as finally determined. [1961 c.666 §§21, 25]

376.785 Judicial proceedings to determine unsettled claims for damages; satisfaction prior to traffic prohibition. (1) If following the hearing the legislative body shall determine that the pedestrian mall shall be established, and if at that time there remain any written claims for damages which have not been allowed pursuant to ORS 376.770 or which have not been withdrawn, the legislative body shall direct that an action or actions be brought in the circuit court of the county in which the city is located in the name of the city by the city attorney, for a determination of the damages, if any, to which the claimant may legally be entitled because of the establishment of the pedestrian mall. Such action shall be in the nature of a proceeding in eminent domain for the condemnation of the right or rights in real property, the taking of which by the establishment of the pedestrian mall results in the damages claimed. In such action the amount set forth in the claim relating thereto shall not constitute a limitation upon the amount which may be pleaded, proved or recovered.

(2) Except as may otherwise be provided in ORS 376.705 to 376.825, such action and proceeding shall be governed so far as the same may be made applicable by those provisions of ORS chapter 35 relating to actions and proceedings in eminent domain. In any such action the resolution adopted under ORS 376.780 (1) shall be conclusive evidence of the public necessity of the proposed pedestrian mall; that the property or rights in property to be taken are necessary therefor, and that the pedestrian mall is planned and located in the manner which will be compatible with the greatest public good and the least private injury.

(3) The judgment in any such action shall be satisfied and a final order taken before vehicular traffic is prohibited, in whole or in part, on the pedestrian mall pursuant to ORS 376.705 to 376.825. [1961 c.666 §§22, 23]

376.790 Assessment of damages and other expenses against benefited lands. After all claims for damages filed pursuant to ORS 376.755 (2) have been finally determined, by allowance by the legislative body, by withdrawal, or by a judgment in an action or actions brought pursuant to ORS chapter 35, and the full amount of damages to be paid has accordingly been finally determined, all or part of the total amount of such damages (but not exceeding such part thereof as may be specified in the resolution of intention), together with all costs and expenses incurred in connection with any proceedings or actions taken pursuant to ORS 376.705 to 376.825, may be assessed against the lands within the district and subject to assessment in proportion to the benefits to be derived from the establishment of the pedestrian mall. [1961 c.666 §26]

376.795 Manner of assessment; sale of bonds representing unpaid assessments. (1) Such assessment may be levied and bonds to represent unpaid assessments issued and sold substantially in the manner provided in ORS 223.005 to 223.105 and 223.205 to 223.930, and to the extent applicable, such law shall govern as to the preparation of the assessment, the lands subject to assessment, the hearing upon the assessment and the notice thereof, the confirmation and recordation of the assessment, the lien of the assessments, the notice of recordation, the collection of assessments, the issuance, sale and delivery of bonds upon unpaid assessments, the term of the bonds, the maximum interest rate thereon, the collection and enforcement of such bonds and all other matters to the extent applicable and except as provided in ORS 376.705 to 376.825.

(2) In so applying the provisions of ORS 223.005 to 228.105 and 223.205 to 223.930, the following provisions and exceptions shall apply:

(a) The limits provided by such law on the amount of the assessment shall not apply.

(b) The legislative body shall provide for the form of the bonds and of the principal and interest coupons to be attached thereto.

(c) The legislative body may provide that the redemption provision of the bonds shall require the payment of such premium as the legislative body may specify. [1961 c.666 §§27, 28]

376.800 Special fund for payment of damages and expenses; use of surplus. (1) All collections of assessments and all pro-

ceeds of the sale of bonds issued upon unpaid assessments shall be placed in a special fund and used exclusively for the payment of the damages, if any, and expenses for which the assessments were levied.

(2) If there is a surplus in such special fund, the legislative body may expend such surplus for the improvement or operation of the pedestrian mall. [1961 c.666 §29]

376.805 Payment of damages and other expenses from sources other than assessments and bonds. Notwithstanding the fact that the proceedings under ORS 376.705 to 376.825 have provided that assessments are to be levied as contemplated by ORS 376.735, the legislative body, at any time and either before or after the adoption of the resolution provided for in ORS 376.780 (1), may determine that such assessments shall not be levied. In lieu thereof the legislative body may provide for the payment of all or any part of the amounts referred to in ORS 376.790, out of general funds of the city or out of any other available funds. [1961 c.666 §30]

376.810 Ordinance establishing mall; contents. Following the adoption of the resolution provided for in ORS 376.780 (1), and as soon as moneys have been fully provided for the payment of all claims, if any, allowed pursuant to ORS 376.770, and for the payment of all damages and compensation, if any, awarded in any action or actions brought pursuant to ORS chapter 35, the legislative body may adopt an ordinance establishing the pedestrian mall. Such ordinance shall contain:

(1) A general description of the pedestrian mall and a declaration and determination that the same is finally established. The mall as finally established shall be substantially the same as that described in the resolution of intention.

(2) Rules and regulations prohibiting vehicular traffic on such pedestrian mall subject to such exceptions as the ordinance may provide. Such rules and regulations and such exceptions shall be substantially in accordance with the statements made in the resolution of intention.

(3) Such additional rules and regulations as the legislative body may determine pertaining to the interpretation, operation and enforcement of the rules and regulations referred to in subsection (2) of this section, and otherwise pertaining to the use, operation, maintenance of the pedestrian mall.

(4) Such provisions as the legislative body may determine pertaining to the operative date or dates of any of such rules or regulations. [1961 c.666 §31]

376.815 Adoption of ordinance; payment of claims, damages and compensation. (1) Such ordinance shall be adopted and published in the manner, and shall take effect, as provided by law or charter for other ordinances of the city. Such ordinance shall be subject to referendum in the same manner as other ordinances of the city.

(2) No payment of allowed claims or damages or compensation awarded by any court shall be made until such ordinance is in effect but all such allowed claims, damages and compensation shall be paid before the rules and regulations provided in such ordinance become operative. [1961 c.666 §§32, 33]

376.820 Jurisdiction over mall; abandonment or modification. (1) Proceedings under ORS 376.705 to 376.825 and the adoption of such ordinance notwithstanding, the city and its legislative body shall retain its police powers and other rights and powers relating to the city streets constituting a part of the pedestrian mall. No action taken pursuant to ORS 376.705 to 376.825 shall be interpreted or construed to be a vacation or abandonment, in whole or in part, of any city street or any right therein, it being intended that the establishment of a pedestrian mall pursuant to ORS 376.705 to 376.825 be a matter of regulation only.

(2) Nothing in ORS 376.705 to 376.825 shall be interpreted or construed to prevent the city and its legislative body, at any time subsequent to the adoption of the ordinance provided for in ORS 376.705 to 376.825, from abandoning the operation of the pedestrian mall, from changing the extent of the pedestrian mall, or from changing or repealing any of the rules and regulations pertaining to the pedestrian mall. [1961 c.666 §34]

376.825 Improvements on mall; payment of costs. (1) The city and its legislative body shall have the power to improve a pedestrian mall as provided in ORS 376.720 (1)(d), and for the accomplishment, in whole or in part, of that purpose may use ORS 223.005 to 223.105 and 223.205 to 223.930 or any similar special assessment law. Any work or improvement permitted by such statutes shall be deemed to be work or improvement permitted to be done under any such Act or law. The city may also pay the whole or any part of the cost and expenses of improving a pedestrian mall from its general funds or from any other available money and may let contracts for the work in any manner permitted by law or charter.

(2) A pedestrian mall established or to be established pursuant to ORS 376.705 to 376.825 may be so improved either concurrently with the proceedings taken under ORS 376.705 to 376.825 for the establishment of

the pedestrian mall or at any time subsequent to the establishment of the city mall, but no contract for the work or improvement shall be awarded until moneys have been fully provided for the payment of all claims allowed pursuant to ORS 376.770 and for the payment of all damages and compensation, if any, awarded in any action or actions brought pursuant hereof. If in connection with the establishment of a pedestrian mall and concurrently with the proceedings taken pursuant to ORS 376.705 to 376.825, the legislative body proposes to improve the proposed pedestrian mall and for that purpose uses ORS 223.005 to 223.105 and 223.205 to 223.930 or any similar special assessment law, the legislative body may combine any part of the proceedings taken pursuant to ORS 376.705 to 376.825 with any part of the proceedings taken under any such special assessment law, to the end that duplication of ordinances, resolutions, notices, hearings and other acts or proceedings may be avoided. [1961 c 666 §§35, 36]

PENALTIES

376.990 Penalties. (1) Operation of a motor vehicle by any person over a contract forest road in violation of the contract provisions as to equipment, weight, width, length or height, is punishable, upon conviction, by a fine not exceeding $400 or by imprisonment in the county jail not exceeding one year, or both. The definitions in ORS 376.310 apply to this section.

(2) Violation by any person of any of the provisions of ORS 376.305 to 376.390 is punishable, upon conviction, by a fine not exceeding $400 or by imprisonment in the county jail not exceeding one year, or both. [Amended by 1971 c.743 §361]