



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – This bill provides a way of ingress and egress to an owner of landlocked land regardless of where the land is located and regardless of its use, thereby increasing the utility to landowners of potentially useless land.

### B. EFFECT OF PROPOSED CHANGES:

#### **Common-Law and Statutory Ways of Necessity**

Under current law, there are two situations in which an owner of landlocked land may obtain access to his or her property, either through the common-law Implied Grant of Way of Necessity,<sup>1</sup> or through a Statutory Way of Necessity Exclusive of Common-Law Right.<sup>2</sup> The common-law procedure only exists if the original owner of the landlocked land and the surrounding land sells or gives the landlocked land to a new owner, and the only access to the landlocked land is across the previous owner's surrounding land. In this situation, it is implied that the original owner has granted a way of necessity, or access, to the new owner of the landlocked land.<sup>3</sup>

In the second situation, a statutory way of necessity exists, exclusive of the common-law right,

when any land or portion thereof outside any municipality which is being used or desired to be used for a dwelling or dwellings or for agricultural or for timber raising or cutting or stockraising purposes shall be shut off or hemmed in by lands, fencing, or other improvements of other persons so that no practicable route of egress or ingress shall be available therefrom to the nearest practicable public or private road.

In this situation, the

owner or tenant thereof, or anyone in their behalf, lawfully may use and maintain an easement for persons, vehicles, stock, franchised cable television service, and any utility service, including, but not limited to, water, wastewater, reclaimed water, natural gas, electricity, and telephone service, over, under, through, and upon the lands which lie between the said shut-off or hemmed-in lands and such public or private road by means of the nearest practical route, considering the use to which said lands are being put.<sup>4</sup>

A judicial remedy exists in s. 704.04, F.S., to force an owner of land surrounding landlocked land to provide access to the landlocked land if the owner of the surrounding land refuses to grant access. This remedy provides that either party or the board of county commissioners may file suit to determine if the claim of the necessity is valid, and, if the claim is found to be valid, to determine the proper compensation to be paid for the access. If the court awards the way of necessity, it must be in compliance with the provisions of s. 704.01(2), F.S. (Statutory way of necessity exclusive of common-law right), and the way of necessity exists as long as the access is reasonably necessary "for the purposes stated herein."

According to the Real Property, Probate and Trust Law section (RPPTL) of the Florida Bar, because the statutory way of necessity only applies to land outside of a municipality and only to land that is being used or desired to be used for a dwelling or dwellings or specified agricultural purposes, owners

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<sup>1</sup> Section 704.01(1), F.S.

<sup>2</sup> Section 704.01(2), F.S.

<sup>3</sup> Section 704.01(1), F.S.

<sup>4</sup> Section 704.01(2), F.S.

of landlocked land within a municipality and owners of landlocked land outside of a municipality that are not using the land for the specified purposes are prevented from making the best use of their property or are not able to use their property at all.<sup>5</sup>

This bill deletes a portion of s. 704.01(2), F.S., that limited the statutory way of necessity to areas outside of a municipality and only when the land was used or desired to be used for a dwelling or dwellings or for agriculture or for timber raising or cutting or stockraising purposes. Additionally, since a statutory way of necessity is not available to a private road for an owner of landlocked land if the owner of the landlocked land does not own or have rights to the private road, the bill changes the reference to a private road to state that it is a "private road in which the landlocked owner has vested easement rights." This will allow the owner of the landlocked land to establish the nearest practical access route from the landlocked land across the surrounding land to either a public road or a private road in which the landlocked owner has vested easement rights.

The bill also deletes the phrase "for the purposes stated herein" in s. 701.04, F.S. (Judicial remedy and compensation to serviant owner), to make clear that an easement awarded under this remedy remains in existence so long as the easement is reasonably necessary, and adds the word "when" to indicate the timing of the award of an easement.

Following each section of the bill that amends the law described above, the bill provides a follow-up section that restates the existing law and provides for the reenactment of that existing law should a court find the changes made by the bill to be unconstitutional and such decision is upheld on appeal.

The bill provides that it takes effect July 1, 2005.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 704.01(2), F.S., to delete language that limited the statutory way of necessity to land outside of a municipality and to land that is used or is desired to be used for a dwelling or dwellings or for agricultural or for timber raising or cutting or stockraising purposes. This section also clarifies the reference to a private road as one in which the landlocked owner has vested easement rights.

**Section 2.** Reenacts s. 704.01(2), F.S., to the law in existence prior to the amendments made by the bill should a court find the amendments to be unconstitutional and such decision is upheld on appeal.

**Section 3.** Amends s. 704.04, F.S., to remove the phrase "for the purposes stated herein," and add the word "when" to indicate the timing of the award of an easement.

**Section 4.** Reenacts s. 704.04, F.S., to the law in existence prior to the amendments made by the bill should a court find the amendments to be unconstitutional and such decision is upheld on appeal.

**Section 5.** Establishes an effective date of July 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

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<sup>5</sup> The Florida Bar, Real Property, Probate, and Trust Law Section, White Paper on F.S. 704.01(2) and 704.04 AN AMENDMENT TO PROVIDE LANDLOCKED LANDOWNERS WITH A WAY OF NECESSITY.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: None.

2. Expenditures: None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill may make it possible for an owner of landlocked land to make the best use of or even to use his or her land which may have some economic benefits. This bill does not change the compensation provisions in current law to compensate the landowner who must allow the statutory way of necessity across that owner's land.

**D. FISCAL COMMENTS:** None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, nor does it reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor does it reduce the percentage of state tax shared with counties or municipalities.

2. Other: None.

**B. RULE-MAKING AUTHORITY:** None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:** None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.