

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 351 CS Statutory Ways of Necessity
SPONSOR(S): Traviesa and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1184

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Civil Justice Committee</u>	<u>5 Y, 0 N</u>	<u>Kruse</u>	<u>Billmeier</u>
2) <u>Local Government Council</u>	<u>8 Y, 0 N, w/CS</u>	<u>Camechis</u>	<u>Hamby</u>
3) <u>Justice Appropriations Committee</u>	<u>7 Y, 0 N</u>	<u>DeBeaugrine</u>	<u>DeBeaugrine</u>
4) <u>Justice Council</u>	<u>8 Y, 0 N, w/CS</u>	<u>Kruse</u>	<u>De La Paz</u>
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, a statutory way of necessity is provided for landlocked property within an unincorporated area if the property is used for dwellings or certain agricultural purposes. This bill amends the statute to allow the same statutory way of necessity for landlocked property located in municipalities. The bill also clarifies that a statutory way of necessity is available to landlocked property if the property is accessible via private road but the owner of the landlocked property does not have a legal right to use the private road. Additionally, the bill provides a procedure for a municipality to follow if it is considering permanently closing a road when such closure would affect an adjoining municipality.

This bill does not appear to have a fiscal impact on state or local governments.

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, 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,¹ or through a Statutory Way of Necessity Exclusive of Common-Law Right.² 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 or retains the landlocked land, 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 or retained a way of necessity, or access, to the landlocked land.³

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.⁴

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

¹ Section 704.01(1), F.S.

² Section 704.01(2), F.S.

³ Section 704.01(1), F.S.

⁴ Section 704.01(2), F.S.

being used or desired to be used for a dwelling or dwellings or specified agricultural purposes, owners 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.⁵

This bill amends s. 704.01(2), F.S., to provide a statutory way of necessity to owners of landlocked property located within a municipality if the property is being used or desired to be used for a dwelling or dwellings, or for agricultural, timber raising, timber cutting, or stockraising purposes. In addition, the bill clarifies that the owner of landlocked property qualifies for a statutory way of necessity if there is access to the property over a private road and the landowner has a vested legal right to use the road.

Permanent Closure of a Road by a Municipality

Chapter 166, Florida Statutes, provides various powers of a municipality including establishing interlocal agreements to provide law enforcement services,⁶ and the alteration, amendment, or expansion of established downtown development districts.⁷ However, this chapter does not address procedures for a municipality to follow when considering permanently closing a road and the effect of the closure on an adjoining municipality.

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. This section also clarifies the reference to a private road as one in which the landlocked owner has vested easement rights.

Section 2. Creates s. 166.0498, F.S., to provide procedures for a municipality to follow when considering permanently closing a road when such closure would affect an adjoining municipality. The procedures include adoption of an ordinance and notifying the adjoining municipality of the public hearing when the ordinance will be considered; providing that the closure may not leave an area within the adjoining municipality with only one means of egress or ingress into the area; providing that emergency service providers of each municipality must determine that the closure will not have an adverse impact on the provision of emergency services; and that the municipality that is closing the road must provide adequate signage and turn-around space for emergency services at the point of road closure.

Section 3. Provides that the bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

⁵ 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.

⁶ Section 166.0495, F.S.

⁷ Section 166.0497, F.S.

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

On April 6, 2005, Representative Traviesa offered, and the Council on Local Government adopted, a strike-all amendment to the bill that deleted a significant portion of the revisions made by the original bill. The amendment deleted provisions allowing any use of landlocked property in an unincorporated area that qualified for a statutory way of necessity so that landlocked property must continue to be used for dwellings and certain agricultural purposes. The amendment also removed a provision amending s. 704.01, F.S., requiring access to certain landlocked lands over the nearest practicable public or private road, and removed a provision amending s. 704.04, F.S., which provided a judicial remedy and compensation to the owner of property over which access is granted.

On April 22, 2005, the Justice Council considered and adopted one amendment to the bill. The amendment provides procedures for a municipality to follow when considering permanently closing a road when such closure would affect an adjoining municipality. The procedures include adoption of an ordinance and notifying the adjoining municipality of the public hearing when the ordinance will be considered; providing that the closure may not leave an area within the adjoining municipality with only one means of egress or ingress into the area; providing that emergency service providers of each municipality must determine that the closure will not have an adverse impact on the provision of emergency services; and the municipality that is closing the road must provide adequate signage and turn-around space for emergency services at the point of road closure. The amendment also changed the effective date of the bill from July 1, 2005, to effective upon becoming a law. The Council passed the bill favorably, as amended. This analysis reflects the changes made to the bill by the adoption of the amendment.