

Bill No. CS for SB 260

Amendment No.     

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Kirkpatrick moved the following amendment:		
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13	<b>Senate Amendment (with title amendment)</b>		
14	On page 30, line 31,		
15			
16	insert:		
17	Section 14. Section 704.01, Florida Statutes, is		
18	amended to read:		
19	<u>(Substantial rewording of section. See</u>		
20	<u>s. 704.01, F.S., for present text.)</u>		
21	<u>704.01 Common-law and statutory easements of</u>		
22	<u>necessity.--</u>		
23	<u>(1) IMPLIED GRANT OF WAY OF NECESSITY.--The common-law</u>		
24	<u>rule of an implied grant of necessity is recognized, adopted,</u>		
25	<u>and modified as follows: An implied grant exists when a</u>		
26	<u>grantor has conveyed or hereafter conveys lands to which there</u>		
27	<u>is no reasonable legal access except over lands retained by</u>		
28	<u>the grantor, or when the grantor has retained or hereafter</u>		
29	<u>retains lands to which there is no reasonable legal access</u>		
30	<u>except over lands that the grantor has conveyed. An implied</u>		
31	<u>grant arises only when a unity of title exists from a common</u>		

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1 source other than the original grant from the state or the  
2 United States. An implied grant is unaffected by subsequent  
3 transfer of either the dominant or servient estate, including  
4 involuntary transfers, such as tax deeds, foreclosures, or  
5 reversions.

6 (2) STATUTORY WAY OF NECESSITY.--Based on public  
7 policy, convenience, and necessity, a statutory way of  
8 necessity exists when any land does not have reasonable legal  
9 access and no common-law implied grant of way of necessity  
10 exists.

11 (3) EXTENT OF WAY OF NECESSITY.--

12 (a) For the purposes of either subsection (1) or  
13 subsection (2), the way of necessity shall be by the shortest  
14 route that provides reasonable legal access between the  
15 portion of the dominant estate most in need of the way and the  
16 public road nearest thereto; provided, however, that the route  
17 of an implied way of necessity to be created pursuant to  
18 subsection (1) shall take into consideration any increase in  
19 the burden upon the servient estate since the severance of  
20 unity of title arising as a result of the creation thereof,  
21 and the route of a statutory way of necessity to be created  
22 under subsection (2) shall take into consideration the new  
23 burden upon the servient estate arising as a result of the  
24 creation thereof.

25 (b) As used in this section, the words "reasonable  
26 legal access" has the following meanings:

27 1. If the dominant estate is within a municipality, it  
28 is: legal access over land which reasonable satisfies all of  
29 the requirements for the beneficial use and enjoyment of the  
30 dominant estate; and

31 2. If the dominant estate is not within a

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1 municipality, it is: legal access over land other than by way  
2 of a bridge, turnpike road, embankment, or substantial fill.

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4 For the purposes of paragraph 1., the fact that there exists  
5 some form of legal access to the dominant estate does not  
6 preclude the establishment of a way of necessity if said  
7 existing access is of such a nature that it does not  
8 constitute reasonable legal access by satisfying all of the  
9 reasonable requirements for the beneficial use and enjoyment  
10 of the dominant estate.

11 (c) The way of necessity under either subsection (1)  
12 or subsection (2) may also be used for franchised cable  
13 television service and necessary utility services, including,  
14 but not limited to, water, wastewater, reclaimed water,  
15 natural gas, electricity, or telephone service.

16 Section 15. 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. 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

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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. A way of  
 10 necessity created under this section shall be evidenced by a  
 11 written instrument, which may be the final judgment, which is  
 12 placed of record and contains a legally sufficient description  
 13 of the easement, the dominant estate, and the servient estate.

14 Section 16. Section 704.03, Florida Statutes, is  
 15 repealed.

16  
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18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 On page 3, line 9, after the semicolon

21

22 insert:

23 amending s. 704.01, F.S.; providing for an  
 24 implied grant of way of necessity and a  
 25 statutory way of necessity for cable television  
 26 and other utility services; amending s. 704.04,  
 27 F.S.; providing for a way of necessity to be  
 28 evidenced by a written instrument; repealing s.  
 29 704.03, F.S.; which defines the word  
 30 "practicable";

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