

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: SB 1184

SPONSOR: Senator Fasano

SUBJECT: Easements

DATE: March 8, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Maclure	JU	Favorable
2.			CA	
3.				
4.				
5.				
6.				

I. Summary:

Under existing law, a statutory way of necessity is only available to access landlocked property:

- not accessible through a common-law way of necessity;
- located outside a municipality; and
- used or intended to be used for residential or agricultural purposes.

Under the bill, a statutory way of necessity is available to access any landlocked property, not accessible through a common-law way of necessity, regardless of the property's location, use, or intended use.

This bill substantially amends the following sections of the Florida Statutes: 704.01 and 704.04.

II. Present Situation:

Owners of landlocked real property may have access to their property through a common-law implied way of necessity or a statutory way of necessity. In some cases, neither an implied way of necessity nor a statutory way of necessity is available. As a result, the owner of the landlocked property may have no right to travel across surrounding property to access the landlocked property.

Common-Law Implied Way of Necessity

The common-law way of necessity is a type of easement that has been codified in s. 704.01(1), F.S.¹ A common-law way of necessity is implied to exist when a grantor conveys part of a parcel of land that causes one of the parcels to be cut off from access to a public road.² A common-law implied way of necessity can expire after 30 years.³ The easement may be preserved by recording a notice with the clerk of court in the county where the easement is located.⁴

Statutory Way of Necessity

An owner of landlocked property that cannot access the property through a common-law implied way of necessity may be able to compel the owner of surrounding property to provide a statutory way of necessity.⁵ A statutory way of necessity is not available to provide access to landlocked parcels located inside a municipality or to parcels that are not used or intended to be used for residential or agricultural purposes.⁶

[T]o obtain a statutory way of necessity, the landowner must establish that the land is (1) outside of a municipality, (2) “being used or desired to be used” for

¹ Section 704.01(1), F.S., states:

The common-law rule of an implied grant of a way of necessity is hereby recognized, specifically adopted, and clarified. Such an implied grant exists where a person has heretofore granted or hereafter grants lands to which there is no accessible right-of-way except over her or his land, or has heretofore retained or hereafter retains land which is inaccessible except over the land which the person conveys. In such instances a right-of-way is presumed to have been granted or reserved. Such an implied grant or easement in lands or estates exists where there is no other reasonable and practicable way of egress, or ingress and same is reasonably necessary for the beneficial use or enjoyment of the part granted or reserved. An implied grant arises only where a unity of title exists from a common source other than the original grant from the state or United States; provided, however, that where there is a common source of title subsequent to the original grant from the state or United States, the right of the dominant tenement shall not be terminated if title of either the dominant or servient tenement has been or should be transferred for nonpayment of taxes either by foreclosure, reversion, or otherwise.

² See *Blanton v. City of Pinellas Park*, 887 So. 2d 1224, 1230 (Fla. 2004).

³ *Id.* and s. 712.04, F.S.

⁴ Sections 712.05 and 712.06, F.S.

⁵ A statutory way of necessity is available under s. 704.01(2), F.S., which states:

Based on public policy, convenience, and necessity, a statutory way of necessity exclusive of any common-law right exists 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. 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; and the use thereof, as aforesaid, shall not constitute a trespass; nor shall the party thus using the same be liable in damages for the use thereof; provided that such easement shall be used only in an orderly and proper manner.

⁶ See s. 704.01(2), F.S.

residential or agricultural purposes, and (3) “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.” If these three circumstances exist, the owner of the landlocked parcel is entitled to “use and maintain an easement for persons, vehicles, stock, franchised cable television service, and any utility service, ... over, under, through, and upon the lands which lie between” the landlocked parcel and the public or private road “by means of the nearest practical route.”⁷

If the owner of land over which a statutory way of necessity is claimed refuses or objects to providing access to the landlocked property, access may be determined by a court. Either the owner of the landlocked parcel, the owner of the parcel through which access is requested, or the board of county commissioners may seek a judicial determination of whether the easement exists, the amount of compensation for the use of the easement, and the location of the easement.⁸

Policy Reasons for Statutory Ways of Necessity

The courts have found that public policy supports the existence of statutory ways of necessity as described below.

[S]ensible utilization of land continues to be one of our most important goals. We take notice that Florida grows in population at one of the fastest rates of any state in the nation. Useful land becomes more scarce in proportion to population increase, and the problem in this state becomes greater as tourism, commerce and the need for housing and agricultural goods grow. By its application to shut-off lands to be used for housing, agriculture, timber production and stockraising, the statute is designed to fill these needs. There is then a clear public purpose in providing means of access to such lands so that they might be utilized in the enumerated ways.⁹

A statutory way of necessity “aids to render the earth--from which all sustenance flows--available to the uses of man.”¹⁰

III. Effect of Proposed Changes:

Under existing law, a statutory way of necessity is only available to access landlocked property:

- not accessible through a common-law way of necessity;
- located outside a municipality; and
- used or intended to be used for residential or agricultural purposes.

⁷ *Blanton*, 887 So. 2d at 1229 (citations omitted).

⁸ Section 704.04, F.S.

⁹ *Deseret Ranches of Florida, Inc., v. Bowman*, 349 So. 2d 155, 156-157 (Fla. 1977).

¹⁰ *Stein v. Darby*, 126 So. 2d 313, 320 (Fla. 1st DCA 1961).

Under the bill, a statutory way of necessity is available to access any landlocked property, not accessible through a common-law way of necessity, regardless of the property's location, use, or intended use. Additionally, the bill provides for a reversion to existing law if the provisions of the bill are found unconstitutional by a court and that finding is upheld on appeal.

Additionally, the bill amends s. 704.04, F.S., to conform to changes to s. 704.01, F.S. Under the bill, a statutory way of necessity may be available regardless of the use or intended use of a parcel of landlocked property. As a result, the bill also deletes the words "for the purposes stated herein" in s. 704.04, F.S. That phrase likely refers to the existing requirement that the use or intended use of landlocked property be for residential or agricultural purposes for a statutory way of necessity to be available.

The bill takes effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

An earlier version of the statutory way of necessity statute was held unconstitutional because the statute authorized the taking of property "from one private owner for the use of another private owner."¹¹ Specifically, the statute violated the State Constitution by depriving a person of property without due process of law and by taking private property without just compensation.¹²

Later versions of the statutes entitle the landowner, who is compelled to provide an easement to the landlocked property, compensation and a judicial remedy.¹³ As a result, courts have determined that the existing statutory way of necessity statutes are constitutional.¹⁴ Similarly, this bill is likely constitutional because it does not diminish the entitlement to compensation and a judicial remedy. Nevertheless, the bill provides for a reversion to existing law if the provisions of the bill are found unconstitutional by a court and that finding is upheld on appeal.

¹¹ *South Dade Farms, Inc., v. B. & L. Farms Co.*, 62 So. 2d 350, 351 (Fla. 1952).

¹² *Id.*

¹³ *Deseret Ranches*, 349 So. 2d at note 3.

¹⁴ *Id.* and *Stein*, 126 So. 2d at 319.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Owners of landlocked property will have access to their property regardless of the property's use, intended use, or location. Property owners surrounding landlocked property may be compelled to provide an easement to a landlocked property owner.

C. Government Sector Impact:

Landlocked government property will be accessible regardless of the property's use, intended use, or location. When government property borders a landlocked parcel, the government may be compelled to provide an easement to the landlocked property owner.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Under existing law, a statutory way of necessity is available only to property located outside a municipality. Existing law also permits a board of county commissioners to file suit to compel the creation of the statutory way of necessity. The bill authorizes the creation of a statutory way of necessity for property located in a municipality. No provision is made by the bill for a city commission to file suit to compel the creation of a statutory way of necessity.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
