

JAN 17 2020

A BILL FOR AN ACT

RELATING TO PROPERTY ACCESS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. Section 7-1, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "§7-1 Building materials, water, etc.; landlords' titles
5 subject to tenants' use. (a) Where the landlords have
6 obtained, or may hereafter obtain, fee simple or allodial titles
7 to their lands, the landowners and landlords of and people on
8 each of their lands shall not be deprived of the right to take
9 firewood, house-timber, aho cord, thatch, or ki leaf, from the
10 land on which they live, for their own private use, but they
11 shall not have a right to take [~~such~~] any articles to sell for
12 profit. The landowners and people shall also have a right to
13 drinking water, and running water, and the right of way. The
14 springs of water, running water, and roads shall be free to all,
15 on all lands granted in fee simple; provided that this shall not
16 be applicable to wells and watercourses [~~, which~~] that
17 individuals have made for their own use."



PART II

SECTION 2. Chapter 664, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

"§664- Easement by necessity. (a) If a complaint filed pursuant to section 664-33 is in respect to a rights of private way and seeks an easement of necessity for ingress, egress, or utility purposes over or across an adjoining parcel, the circuit court, exercising its equitable powers, shall grant an easement by necessity if it determines that:

- (1) The landlocked parcel has no other reasonable way of obtaining access for ingress, egress, or utilities;
- (2) The owner of the landlocked parcel requires the easement to properly have the use and enjoyment of the landlocked parcel;
- (3) The adjoining parcel is the most reasonable parcel to burden with the easement; and
- (4) Granting the easement would not overly burden the adjoining parcel.

(b) The circuit court shall not be required to find that there existed a prior unity of title between the landlocked



1 parcel and the adjoining parcel before granting the easement
2 pursuant to this section.

3 (c) In determining the route of an easement, the circuit
4 court shall give preference to a route that:

5 (1) Uses existing roadways on the adjoining parcel;

6 (2) Provides the shortest route to the landlocked parcel
7 from a public highway;

8 (3) Causes the least amount of damage and intrusion to the
9 adjoining parcel; and

10 (4) Is located away from any residence or related
11 improvements on the adjoining parcel if the route
12 requires the construction of a new roadway.

13 (d) In granting the easement, the court shall order that
14 the easement:

15 (1) Shall be nonexclusive and may be used by the owner of
16 the adjoining parcel and other persons to whom the
17 owner of the adjoining parcel may reasonably grant
18 similar rights or easements; and

19 (2) Shall not exceed twenty feet in width and that any
20 road on the easement shall not exceed ten feet in
21 width.



S.B. NO. 2097

1 (e) The owner of a landlocked parcel who acquires an
2 easement pursuant to this section shall pay just compensation as
3 determined by a mutually agreed upon appraiser, and shall
4 contribute to the improvement and maintenance of the easement
5 for the purpose of ingress, egress, or utilities in accordance
6 with all laws, ordinances, and rules. If the parties cannot
7 agree upon an appraiser, the court shall appoint one.

8 (f) The court shall render a decision pursuant to section
9 664-34 within six months of the filing of the complaint;
10 provided that any periods of delay caused by or granted at the
11 request or with the consent of the claimant shall be excluded in
12 computing the six-month period."

13 SECTION 3. Section 664-31, Hawaii Revised Statutes, is
14 amended by adding three new definitions to be appropriately
15 inserted and to read as follows:

16 "Adjoining parcel" means a parcel of land that shares a
17 common boundary with a landlocked parcel.

18 "Owner" means the person holding fee simple title or the
19 fee.



1 "Landlocked parcel" means a separate parcel of real
2 property that has no legal access for ingress, egress, or
3 utilities purposes."

4 SECTION 4. Section 664-34, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "~~§664-34 Same; decision.~~ (a) The court shall hear the
7 evidence offered relative to the right in controversy, and may,
8 if deemed desirable to the rendering of a correct decision,
9 visit the locality where the controversy arose. It shall give
10 such decision as may in each particular case appear to be in
11 conformity with vested rights and shall be just and equitable
12 between the parties.

13 (b) The decision shall state expressly the findings of
14 fact on the evidence, and shall in cases of ~~[right]~~ a:

15 (1) Right of way, clearly indicate the location (if
16 possible) and nature of the way; ~~[if on a water]~~
17 provided that in cases of an easement, the decision
18 shall also be rendered in accordance with section
19 664- ; and

20 (2) Water right, ~~[it shall]~~ state the proportion of time
21 for use, and any other things necessary to the right.



S.B. NO. 2097

1 ~~[It]~~ The decision may also regulate the methods by
2 which water may be obtained, and by which its supply
3 can be controlled.

4 (c) As far as possible, the rights of parties served by
5 publication who have not appeared in the action shall be
6 ascertained. Judgment shall be entered in accordance with the
7 decision."

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect upon its approval.

11

INTRODUCED BY: *JMM*

By Request



S.B. NO. 2097

Report Title:

Gathering Rights; Landowner; Landlord; Easement; Rights of Way;
Circuit Court

Description:

Extends the application of gathering rights to lands owned in fee simple and to landlords and landowners. Authorizes an action for easement by necessity for landlocked parcels not previously under a unity of title with the prospective subservient estate.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

