

JAN 17 2024

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# A BILL FOR AN ACT

RELATING TO AFFORDABLE HOUSING.

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

1       SECTION 1. The legislature finds that the severe shortage  
2 of affordable housing imposes a tremendous hardship on the  
3 residents of the State. This shortage is in part attributable  
4 to the high costs to develop property in Hawaii. A concerning  
5 potential component of that cost involves securing air rights  
6 for construction cranes to swing over surrounding properties to  
7 avoid any potential claim for trespass.

8       Tower cranes transport necessary steel, concrete, large  
9 tools, and other building materials required for the  
10 construction of housing on the site. The tower crane often  
11 stands more than two hundred fifty feet tall, and its horizontal  
12 arm, known as the "jib", may extend more than two hundred feet.  
13 When not in use, the jib must be left free to swing in the wind;  
14 otherwise, a high wind may knock the crane over. In compact  
15 urban areas, the free-swinging jib typically intrudes into the  
16 unoccupied airspace well above neighboring properties. If the



1 crane's intrusion is deemed a trespass and is enjoined, the  
2 project could be indefinitely delayed.

3 The legislature further finds that the cost of obtaining a  
4 license or easement for use of the construction crane may be  
5 dependent on the neighboring landowner's cooperation. In some  
6 cases, these neighboring landowners are demanding exorbitant  
7 sums of money that are not proportional to the actual use of the  
8 unoccupied airspace. This cost and potential delay impacts of  
9 getting cooperation will ultimately be borne by the future  
10 owners of the units being constructed. Furthermore, when  
11 adjacent landowners unreasonably restrict a housing project's  
12 need to access airspace for a project's tower crane, the  
13 restriction negatively affects the State's overall goal of  
14 producing more affordable housing as cost effectively as  
15 possible.

16 The legislature additionally finds that states such as  
17 Illinois and New Jersey have found that temporary construction  
18 cranes and scaffolding do not constitute an actionable trespass  
19 because the intrusion does not interfere with the landowner's  
20 use of the landowner's property and does not cause harm to the  
21 landowner.



1        While ownership of property is a sacred right in Hawaii,  
2        landowners should not be permitted to use their property in such  
3        a way as to be injurious to the greater good of the community,  
4        nor should they be allowed to unjustly withhold permission for  
5        exorbitant sums of money for temporary rights to airspace.

6        The purpose of this Act is to prohibit a landowner from  
7        bringing a private cause of action against a contractor,  
8        developer, or owner of affordable housing for trespass in  
9        instances where a temporary construction crane or other  
10       construction machinery intrudes into the landowner's airspace  
11       during construction, repair, or maintenance of affordable  
12       housing; provided that the conduct does not materially interfere  
13       with the landowner's actual use of the landowner's premises.  
14       Additionally, this Act is not intended to discourage  
15       contractors, developers, or owners of affordable housing from  
16       obtaining the necessary insurance to cover any potential risks  
17       to neighboring landowners.

18       SECTION 2. Chapter 663, Hawaii Revised Statutes, is  
19       amended by adding a new section to be appropriately designated  
20       and to read as follows:



1        "§663-        Trespass; no liability for temporary use of  
2 airspace; affordable housing.    (a)   Subject to the requirements  
3 of subsection (b), a contractor, developer, or owner of  
4 affordable housing shall be permitted to employ a construction  
5 crane or other machinery that temporarily intrudes into a  
6 neighboring landowner's airspace.

7        (b)   The conduct described in subsection (a) shall not  
8 constitute trespass if it occurs in the airspace above a  
9 landowner's premises and the conduct:

10        (1)   Does not materially interfere with the landowner's  
11        actual use of the premises; and

12        (2)   Is directly related to the construction, maintenance,  
13        or repair of affordable housing as defined in section  
14        201H-57.

15        (c)   No cause of action may be brought by a landowner based  
16 upon a claim of trespass when the conduct meets the criteria  
17 identified in subsections (a) and (b), nor is any independent  
18 cause of action created by this section.

19        (d)   As used in this section, unless the context otherwise  
20 requires:



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1       "Premises" includes any building or portion thereof, or any  
2 real property.

3       "Trespass" means the entry into or occupying of the  
4 airspace above a landowner's premises or interference with any  
5 asserted property right attributable to that airspace without  
6 the prior authorization, permission, or invitation of the  
7 landowner."

8       SECTION 3   This Act does not affect rights and duties that  
9 matured, penalties that were incurred, and proceedings that were  
10 begun before its effective date.

11       SECTION 4.   New statutory material is underscored.

12       SECTION 5.   This Act shall take effect on July 1, 2024.

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INTRODUCED BY:

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# S.B. NO. 2078

**Report Title:**

Trespass; Construction Crane; Machinery; Airspace; Temporary Use; Affordable Housing

**Description:**

Permits a contractor, developer, or owner of affordable housing to employ a construction crane or other machinery that temporarily intrudes into a neighboring landowner's airspace, under certain conditions.

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

