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



1 properties. If the crane's intrusion is deemed a trespass and  
2 is enjoined, the 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. These costs and potential delays of  
9 obtaining cooperation from neighboring landowners will  
10 ultimately be borne by the future owners of the units being  
11 constructed. Furthermore, when adjacent landowners unreasonably  
12 restrict a housing project's need to access airspace for a  
13 project's tower crane, the restriction negatively affects the  
14 State's overall goal of producing more affordable housing as  
15 cost effectively as 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 Accordingly, the purpose of this Act is to prohibit a  
7 landowner from bringing a private cause of action against a  
8 contractor, developer, or owner of affordable housing for  
9 trespass in instances where a temporary construction crane or  
10 other construction machinery intrudes into the landowner's  
11 airspace during construction, repair, or maintenance of  
12 affordable housing, including any intrusion that may occur when  
13 the crane or other machinery is not in use; provided that the  
14 conduct does not materially interfere with the landowner's  
15 actual use of the landowner's premises. Additionally, this Act  
16 is not intended to discourage contractors, developers, or owners  
17 of affordable housing from obtaining the necessary insurance to  
18 cover any potential risks to neighboring landowners.

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



1        "§663-    Trespass; no liability for temporary use of  
2 airspace; affordable housing. (a) A contractor, developer, or  
3 owner of affordable housing shall be permitted to employ a  
4 construction crane or other machinery that temporarily intrudes  
5 into a neighboring landowner's airspace and such temporary  
6 intrusions shall not constitute a trespass, and no cause of  
7 action for the same may be brought by a landowner if the  
8 temporary intrusion:

9        (1) Occurs not less than twenty-five feet above the height  
10        of the neighboring structure;

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

13        (3) Is directly related to the construction, maintenance,  
14        or repair of affordable housing.

15        (b) This section shall apply regardless of whether the  
16 construction crane is or is not in operation.

17        (c) As used in this section, unless the context otherwise  
18 requires:

19        "Affordable housing" has the same meaning as in section  
20 201H-57.



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

3       "Temporarily" means the duration of the construction of the  
4 affordable housing project; provided that the project is being  
5 constructed in good faith.

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

11       SECTION 3. This Act does not affect rights and duties that  
12 matured, penalties that were incurred, and proceedings that were  
13 begun before its effective date.

14       SECTION 4. New statutory material is underscored.

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



**Report Title:**

Trespass; Construction Cranes; 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. (SD1)

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

