

ACT 211

H.B. NO. 2332

A Bill for an Act Relating to Easements.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that public agencies in the State frequently encounter challenges in obtaining various types of easements on public lands due to a requirement that obtaining an easement also requires a formal subdivision approval from the counties. The legislature further finds that the formal subdivision process requires a significant investment of time and resources, such as the hiring of a professional land surveyor to prepare a map and metes and bounds descriptions of the easement corridor, and can hinder progress in certain public projects that could proceed but for resolution of the easement issue. One example of this issue was raised by the Act 90 working group, which was established to determine the process, status, challenges, and potential remedies regarding delays in the transfer of certain non-agricultural park lands and assets related to their management from the department of land and natural resources to the department of agriculture. The Act 90 working group found that fifteen parcels would be considered eligible for transfer if an easement were provided to allow access to an adjacent parcel.

The legislature concludes that the process of granting easements on public lands would be simpler and more efficient if the process did not also require approval of a formal subdivision nor its related requirements, such as requirements for professional surveying. The legislature believes that this amendment to the process of obtaining easements on public lands would serve a greater public purpose and is appropriate, as easements are use rights rather than land development rights.

The purpose of this Act is to allow an exemption for the granting of easements on public lands affecting the transfer of lands between the department of land and natural resources and the department of agriculture, pursuant to chapter 166E, Hawaii Revised Statutes, from formal subdivision process and approval requirements, including requirements for surveying and formalizing easements; provided that the easements are created for a public purpose on public or government-owned lands.

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

“§46- Easements; formal subdivision process and approval exemption. Notwithstanding any provision of law to the contrary, the granting of easements on public lands affecting the transfer of public lands between the department of land and natural resources and department of agriculture, pursuant to chapter 166E, may be exempt from formal subdivision process and approval requirements, including requirements for surveying and formalizing easements. Any exemption granted pursuant to this section shall be limited to easements created for a public purpose on public or other government-owned lands. The government agency that grants the easements may notify in writing the county having jurisdiction to process and approve the easements of the government agency’s intent to invoke this exemption.”

SECTION 3. Section 46-66, Hawaii Revised Statutes, is amended to read as follows:

“§46-66 Disposition of real property. Notwithstanding any other law to the contrary[;] and except as provided in section 46-, each county, subject

to the approval of the council, may grant, sell, or otherwise dispose of any easement for particular purposes in perpetuity by direct negotiation or otherwise, subject to revert to the county upon the termination or abandonment of the specific purpose for which the easement was granted, including easements over, under, through, and across land bordering the ocean and easements for any governmental or public utility purpose or for chilled water and seawater distribution systems for renewable energy seawater air conditioning district cooling systems.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

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

(Approved June 27, 2022.)

Note

1. Edited pursuant to HRS §23G-16.5.