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# A BILL FOR AN ACT

RELATING TO HAZARDS.

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

1           SECTION 1. The legislature finds that conditions exist on  
2 public and private property that pose a significant risk of harm  
3 to the public. In the case of private property, a dangerous  
4 condition may exist that poses a significant risk of harm to an  
5 adjoining landowner. While the affected landowners may have  
6 rights to personally address some conditions, there are  
7 situations in which doing so may place the affected landowner in  
8 a position of financial hardship or at risk of personal harm.  
9 Where a dangerous condition exists and injury is caused as a  
10 result, private property owners may seek remedies by way of  
11 civil actions. However, the courts are not readily accessible  
12 to all persons, especially those who do not have the economic  
13 means to hire legal counsel.

14           The purpose of this Act is to allow civil defense  
15 personnel, at the discretion of the governor, to enter on  
16 private property, after giving the landowner notice, to mitigate  
17 hazardous situations such as dangerous trees or branches that

1 pose a falling hazard, unstable rock and soil conditions, or  
2 clogged streams.

3 SECTION 2. Chapter 128, Hawaii Revised Statutes, is  
4 amended by adding a new section to be appropriately designated  
5 and to read as follows:

6 **"§128- Civil defense powers; mitigation of hazardous**  
7 **situations.** (a) Even in the absence of a civil defense  
8 activity or other emergency, the governor may enter onto private  
9 property at reasonable times to mitigate situations deemed by  
10 the governor to be hazardous to the health and safety of the  
11 public, including:

12 (1) Dangerous trees or branches that pose a falling  
13 hazard;

14 (2) Stabilizing or removing unstable rock and soil  
15 hazards; or

16 (3) Cleaning streams and waterways to mitigate or prevent  
17 flooding or other disasters;

18 provided that at least ten days notice is provided to the  
19 landowner and the occupier of the private property is aware of  
20 the governor's intention to enter the property to mitigate the  
21 hazardous condition.

1        (b) Written notice sent to the landowner's last known  
2 address by certified mail, postage prepaid, return receipt  
3 requested, shall be deemed sufficient notice. In the event that  
4 land ownership cannot be determined, notice shall be given once  
5 in a daily or weekly publication of general circulation in the  
6 county where any action or proposed action will be taken.

7        (c) If entry is refused, the governor may apply to the  
8 district court in the circuit in which the property is located  
9 for a warrant to enter the premises. The district court may  
10 issue a warrant directing the chief of the appropriate county  
11 police to assist the governor in gaining entry onto the premises  
12 during regular working hours or at other reasonable times.

13        (d) The governor may seek recovery and reimbursement, by  
14 appropriate proceedings, of all costs and expenses incurred in  
15 the mitigation of a hazardous situation under this section, and  
16 any costs and expenses imposed against any landowner shall be a  
17 lien upon the landowner's property."

18        SECTION 3. Section 127-10, Hawaii Revised Statutes, is  
19 amended to read as follows:

20        "**§127-10 Disaster relief during suspension of preceding**  
21 **sections.** During any period in which sections 127-1 to 127-9  
22 are not in effect, the governor and political subdivisions may

1 exercise any and all of their powers under chapter 128 or that  
2 relate to disasters resulting from enemy attacks, [~~in order~~] to  
3 provide other disaster relief. All provisions of law that  
4 relate to disasters resulting from enemy attacks during [~~such~~]  
5 the period and all provisions of chapter 128 are made applicable  
6 to other disaster relief, including without limitation,  
7 provisions making or authorizing appropriations or expenditures.

8 As used in this section, "other disaster relief" means the  
9 preparation for and the carrying out of all functions, other  
10 than functions for which military forces are primarily  
11 responsible, to minimize and repair injury and damage resulting  
12 from disasters caused by fire, flood, tidal wave, volcanic  
13 eruption, earthquake, or other natural causes and major  
14 disasters caused by acts of man[~~7~~] including [~~but not limited~~  
15 ~~to~~] massive oil spills, nuclear accidents, airplane crashes,  
16 and civil disturbances."

17 SECTION 4. Act 78, Session Laws of Hawaii 2007, is amended  
18 by amending section 6 to read as follows:

19 "SECTION 6. Any provision of the Act to the contrary  
20 notwithstanding, the appropriations under this Act shall not  
21 lapse at the end of the fiscal year for which the appropriations  
22 were made. All unexpended and unencumbered balances of the

1 appropriations made in this Act as of the close of business on  
2 June 30, [~~2009,~~] 2010, shall lapse.

3       Should any projects paid for by state funds under this Act  
4 later become eligible for federal reimbursement the federal  
5 reimbursement funds shall be deposited in the emergency and  
6 budget reserve fund; provided that moneys expended by  
7 departments and agencies of the state or counties for projects  
8 under this Act that later become eligible for federal  
9 reimbursements shall be reimbursed to the department or agency."

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

12       SECTION 6. This Act shall take effect on January 1, 2046;  
13 provided that section 4 of this Act shall take effect on  
14 June 30, 2009.

**Report Title:**

Hazard Mitigation; Private Property

**Description:**

Allows Civil Defense, when no emergency exists, to enter on private property to mitigate hazardous situations after giving the landowner notice. May seek recovery and reimbursement of costs and expenses. (SD1)