
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 designated state
15 employees, at the discretion of the governor, to enter on
16 private property, after giving the landowner notice and a
17 reasonable opportunity to mitigate the hazardous situation
18 without assistance of the State, to mitigate hazardous

1 situations such as dangerous trees or branches that pose a
2 falling hazard, unstable rock and soil conditions, or clogged
3 streams.

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

7 **"§128- Civil defense powers; mitigation of hazardous**
8 **situations.** (a) Even in the absence of a civil defense
9 activity or other emergency, the governor may authorize
10 designated state employees to enter onto private property at
11 reasonable times to mitigate situations deemed by the governor
12 to be hazardous to the health and safety of the public; provided
13 that this section shall be applicable only to the following
14 hazardous situations:

15 (1) Dangerous trees or branches that pose a falling
16 hazard;

17 (2) Stabilizing or removing unstable rock and soil
18 hazards; or

19 (3) Cleaning streams and waterways to mitigate or prevent
20 flooding or other disasters;

21 provided further that at least ten days notice is provided to
22 the landowner and the occupier of the private property is aware

1 of the governor's intention to authorize designated state
2 employees to enter the property to mitigate the hazardous
3 condition; provided further that the landowner or occupier shall
4 be given a reasonable opportunity to mitigate the hazardous
5 situation without assistance of the State before the designated
6 state employees may enter the property.

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

13 (c) If entry is refused, the governor may apply to the
14 district court in the circuit in which the property is located
15 for a warrant to enter the premises. The district court may
16 issue a warrant directing the chief of the appropriate county
17 police to assist the governor in gaining entry onto the premises
18 during regular working hours or at other reasonable times.

19 (d) The governor may seek recovery and reimbursement, by
20 appropriate proceedings, of all costs and expenses incurred in
21 the mitigation of a hazardous situation under this section, and

1 any costs and expenses imposed against any landowner shall be a
2 lien upon the landowner's property."

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

5 "**§127-10 Disaster relief during suspension of preceding**
6 **sections.** During any period in which sections 127-1 to 127-9
7 are not in effect, the governor and political subdivisions may
8 exercise any and all of their powers under chapter 128 or that
9 relate to disasters resulting from enemy attacks, [~~in order~~] to
10 provide other disaster relief. All provisions of law that
11 relate to disasters resulting from enemy attacks during [~~such~~]
12 the period and all provisions of chapter 128 are made applicable
13 to other disaster relief, including without limitation,
14 provisions making or authorizing appropriations or expenditures.

15 As used in this section, "other disaster relief" means the
16 preparation for and the carrying out of all functions, other
17 than functions for which military forces are primarily
18 responsible, to minimize and repair injury and damage resulting
19 from disasters caused by fire, flood, tidal wave, volcanic
20 eruption, earthquake, or other natural causes and major
21 disasters caused by acts of man[7] including [~~but not limited~~

1 ~~to,~~ massive oil spills, nuclear accidents, airplane crashes,
2 and civil disturbances."

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

5 "SECTION 6. Any provision of the Act to the contrary
6 notwithstanding, the appropriations under this Act shall not
7 lapse at the end of the fiscal year for which the appropriations
8 were made. All unexpended and unencumbered balances of the
9 appropriations made in this Act as of the close of business on
10 June 30, [~~2009,~~] 2010, shall lapse.

11 Should any projects paid for by state funds under this Act
12 later become eligible for federal reimbursement the federal
13 reimbursement funds shall be deposited in the emergency and
14 budget reserve fund; provided that moneys expended by
15 departments and agencies of the state or counties for projects
16 under this Act that later become eligible for federal
17 reimbursements shall be reimbursed to the department or agency."

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

20 SECTION 6. This Act shall take effect on July 1, 2050;
21 provided that section 4 of this Act shall take effect on
22 June 30, 2009.

Report Title:

Hazard Mitigation; Private Property

Description:

Authorizes the governor to designate state employees, when no emergency exists, to enter on private property to mitigate hazardous situations after giving the landowner notice and a reasonable opportunity to mitigate the hazardous situation without assistance of the State. May seek recovery and reimbursement of costs and expenses. Effective 7/1/2050. (SD2)