

ACT 85

S.B. NO. 1505

A Bill for an Act Relating to Invasive Species.

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

SECTION 1. The legislature finds that the silent invasion of Hawaii by insects, disease-bearing organisms, snakes, weeds, and other pests is the single greatest threat to Hawaii's economy and natural environment and to the health and lifestyle of Hawaii's people. Invasive species already cause millions of dollars in crop losses, the extinction of native species, the destruction of native forests, and the spread of disease. Every day the media reports another serious case of an invasive species attacking Hawaii, whether it is the Coqui frog, *Salvinia molesta*, *Miconia calvescens*, or dengue fever. Yet there are many more harmful species that threaten to invade Hawaii and wreak further damage. Even one new pest, such as the brown tree snake or the red imported fire ant, could forever change the character of the islands. Stopping the influx of new invasive species and containing their spread is essential to Hawaii's future well-being.

Unwanted invasive species are entering Hawaii at an alarming rate—about two million times more rapidly than the natural rate. In 1993, the federal Office of Technology Assessment declared Hawaii's alien pest species problem as the worst in the nation. Hawaii's evolutionary isolation from the continents and its modern role as the commercial hub of the Pacific make these islands particularly vulnerable to destruction by invasive species. Gaps in invasive species prevention systems and a lack of public awareness further add to this serious problem.

The present problem is severe. The future, though, may be even more dire. Slow, piecemeal action will not be sufficient. Drastic improvements must be made now to stem the tide of invasive species.

Last year, then-Governor Benjamin Cayetano issued Executive Order No. 2002-03, establishing the Hawaii invasive species council in recognition of the

urgent need to protect Hawaii's natural resources and economy as well as the health and quality of life of Hawaii's residents and visitors from invasive species. The Hawaii invasive species council's special purpose is to foster coordinated approaches that support local initiatives for the prevention and control of invasive species, such as the coordinating group on alien pest species and the island invasive species committees. The Hawaii invasive species council has since initiated development of coordinated invasive species policy.

The legislature finds that the silent invasion of Hawaii by alien invasive species is the single greatest threat to Hawaii's economy, natural environment, and the health and lifestyle of Hawaii's people and visitors. Invasive species cause millions of dollars in crop damage, the extinction of native species, the destruction of native ecosystems, and the spread of many diseases.

The purpose of this Act is to:

- (1) Provide statutory authority to the Hawaii invasive species council to continue its special purpose to foster and organize coordinated approaches among various executive departments, federal agencies, and international and local initiatives for the prevention and control of invasive species; and
- (2) Affirm the objective of the State to rid Hawaii of invasive species.

This Act does not create any new function of government or require additional funding.

SECTION 2. As used in this Act, unless the context requires otherwise:

"Council" means the Hawaii invasive species council.

"Department" means any entity that is a member of the Hawaii invasive species council established under section 3(a).

SECTION 3. (a) There is established a temporary invasive species council for the special purpose of providing policy level direction, coordination, and planning among state departments, federal agencies, and international and local initiatives for the control and eradication of harmful invasive species infestations throughout the State and for preventing the introduction of other invasive species that may be potentially harmful. The council shall:

- (1) Maintain a broad overview of the invasive species problem in the State;
- (2) Advise, consult, and coordinate invasive species-related efforts with and between the departments of agriculture, land and natural resources, health, and transportation, as well as state, federal, international, and privately organized programs and policies;
- (3) Identify and prioritize each lead agency's organizational and resource shortfalls with respect to invasive species;
- (4) After consulting with appropriate state agencies, create and implement a plan that includes the prevention, early detection, rapid response, control, enforcement, and education of the public with respect to invasive species, as well as fashion a mission statement articulating the State's position against invasive species;
- (5) Coordinate and promote the State's position with respect to federal issues, including:
  - (A) Quarantine preemption;
  - (B) International trade agreements that ignore the problem of invasive species in Hawaii;
  - (C) First class mail inspection prohibition;
  - (D) Whether quarantine of domestic pests arriving from the mainland should be provided by the federal government;

- (E) Coordinating efforts with federal agencies to maximize resources and reduce or eliminate system gaps and leaks, including deputizing the United States Department of Agriculture's plant protection and quarantine inspectors to enforce Hawaii's laws;
- (F) Promoting the amendment of federal laws as necessary, including the Lacey Act Amendments of 1981, Title 16 United States Code sections 3371-3378; Public Law 97-79, and laws related to inspection of domestic airline passengers, baggage, and cargo; and
- (G) Coordinating efforts and issues with the federal Invasive Species Council and its National Invasive Species Management Plan;
- (6) Identify and record all invasive species present in the State;
- (7) Designate the department of agriculture, health, or land and natural resources as the lead agency for each function of invasive species control, including prevention, rapid response, eradication, enforcement, and education;
- (8) Identify all state, federal, and other moneys expended for the purposes of the invasive species problem in the State;
- (9) Identify all federal and private funds available to the State to fight invasive species and advise and assist state departments to acquire these funds;
- (10) Advise the governor and legislature on budgetary and other issues regarding invasive species;
- (11) Provide annual reports on budgetary and other related issues to the legislature twenty days prior to each regular session;
- (12) Include and coordinate with the counties in the fight against invasive species to increase resources and funding and to address county-sponsored activities that involve invasive species;
- (13) Review state agency mandates and commercial interests that sometimes call for the maintenance of potentially destructive alien species as resources for sport hunting, aesthetic resources, or other values;
- (14) Review the structure of fines and penalties to ensure maximum deterrence for invasive species-related crimes;
- (15) Suggest appropriate legislation to improve the State's administration of invasive species programs and policies;
- (16) Incorporate and expand upon the department of agriculture's weed risk assessment protocol to the extent appropriate for the council's invasive species control and eradication efforts; and
- (17) Perform any other function necessary to effectuate the purposes of this Act.

(b) The council members shall be appointed by the governor not later than January 1, 2004. The council shall be administratively attached to the office of the governor and shall be composed of:

- (1) The president of the University of Hawaii, or the president's designated representative;
- (2) The director, or the director's designated representative, of each of the following departments:
  - (A) Business, economic development, and tourism;
  - (B) Health; and
  - (C) Transportation; and
- (3) The chairperson, or the chairperson's designated representative, of each of the following departments:
  - (A) Agriculture; and
  - (B) Land and natural resources.

(c) Representatives of federal agencies and members of the private sector shall be asked to participate or consulted for advice and assistance.

(d) The council shall meet no less than twice annually to discuss and assess progress and recommend changes to the invasive species programs based on results of current risk assessments, performance standards, and other relevant data.

(e) The council shall submit a report of its activities to the governor and legislature annually.

SECTION 4. A state department that is designated as a lead agency under section 3(a)(7), with respect to a particular function of invasive species control, shall have sole administrative responsibility and accountability for that designated function of invasive species control. The lead agency shall:

- (1) Coordinate all efforts between other departments and federal and private agencies to control or eradicate the designated invasive species;
- (2) Prepare a biennial multidepartmental budget proposal for the legislature forty days before the convening of the regular session of the legislature in each odd-numbered year, showing the budget requirements of each of the lead agency's assigned invasive species function that includes the budget requirements of all departments that it leads for that species, as well as other federal and private funding for that invasive species;
- (3) Prepare and distribute an annual progress report forty days prior to the convening of each regular session of the legislature to the governor and the legislature that includes the status of each assigned function; and
- (4) Any other function of a lead agency necessary to effectuate the purposes of this Act.

SECTION 5. Notwithstanding any other law to the contrary, and in addition to any other authority provided by law that is not inconsistent with the purposes of this Act, a department is authorized to examine, control, and eradicate all instances of invasive species identified by the council for control or eradication and found on any public or private premises or in any aircraft or vessel landed or docked in waters of the State.

SECTION 6. (a) Whenever any invasive species identified by the council for control or eradication is found on private property, a department may enter such premises to control or eradicate the invasive species after reasonable notice is given to the owner of the property and, if entry is refused, pursuant to the court order in subsection (d).

(b) If applicable, a duplicate of the notice so given shall be left with one or more of the tenants or occupants of the premises. If the premises are unoccupied, notice shall be mailed to the last known place of residence of the owner, if residing in the State. If the owner resides out of the State or cannot be expeditiously provided with notice, notice left at the house or posted on the premises shall be sufficient.

(c) The department may instead cause notice to be given, and order the owner to control or eradicate the invasive species, if such species was intentionally and knowingly established by the owner on the owner's property and not naturally dispersed from neighboring properties, at the owner's expense within such reasonable time as the department may deem proper, pursuant to the notice requirements of this section.

(d) If the owner thus notified fails to comply with the order of the department, or its agent, within the time specified by the department, or if entry is refused after notice is given pursuant to subsection (a) and, if applicable subsection (b), the department or its agent may apply to the district court of the circuit in which the

property is situated for a warrant, directed to any police officer of the circuit, commanding the police officer to take sufficient aid and to assist the department member or its agent in gaining entry onto the premises, and executing measures to control or eradicate the invasive species.

(e) The department may recover by appropriate proceedings the expenses incurred by its order from any owner who, after proper notice, has failed to comply with the department's order.

(f) In no case shall the department or any officer or agent thereof be liable for costs in any action or proceeding that may be commenced pursuant to this Act.

SECTION 7. (a) Whenever any invasive species is found on state or county property or on a public highway, street, lane, alley, or other public place controlled by the State or county, notice shall be given by the department or its agent, as the case may be, to the person officially in charge thereof, and the person shall be reasonably notified and ordered by the department to control or eradicate the invasive species.

(b) In case of a failure to comply with the order, the mode of procedure shall be the same as provided in case of private persons in section 6.

SECTION 8. The invasive species council may adopt rules pursuant to chapter 91, Hawaii Revised Statutes, to effectuate this Act.

SECTION 9. Section 150A-6.1, Hawaii Revised Statutes, is amended to read as follows:

**“§150A-6.1 Plant import.** (a) The board shall maintain a list of restricted plants that require a permit for entry into the State. Restricted plants shall not be imported into the State without a permit issued pursuant to rules.

(b) The department shall designate, by rule, as restricted plants, specific plants that spread or may be likely to spread an infestation or infection of an insect, pest, or disease that is detrimental or potentially harmful to agriculture, horticulture, the environment, or animal or public health. In addition, plant species designated by rule as noxious weeds are designated as restricted plants.

(c) No person shall import, offer for sale, or sell any *Salvinia molesta* or *Salvinia minima* and *pistia stratiotes* plants or portion thereof within the State.”

SECTION 10. Section 150A-9.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Interim rules adopted by the department pursuant to this section shall be effective as stated by such rules; provided that:

- (1) Any interim rule shall be published at least once statewide within twelve days of issuance; and
- (2) No interim rule shall be effective for more than one ~~[hundred eighty days.]~~ year.”

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

SECTION 12. This Act shall take effect upon its approval and shall be repealed on July 1, 2008.

(Approved May 23, 2003.)