

ACT 76

H.B. NO. 1713

A Bill for an Act Relating to Hazards.

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

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

The purpose of this Act is to allow designated state employees, at the discretion of the governor, to enter private property to mitigate hazardous situations such as dangerous trees or branches that pose a falling hazard, unstable rock and soil conditions, or clogged streams, after giving the landowner notice and a reasonable opportunity to mitigate the hazardous situation without assistance from the State.

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

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

- (1) Cutting, trimming, or removing dangerous trees or branches that pose a hazard to other properties;
- (2) Stabilizing or removing unstable rock and soil hazards; or
- (3) Cleaning streams and waterways to mitigate or prevent flooding or other disasters;

provided further that at least ten days' notice shall be provided to the landowner and to the occupier of the private property of the governor's intention to authorize designated state employees to enter the property to mitigate the hazardous situation; provided further that the landowner or occupier shall be given a rea-

sonable opportunity to mitigate the hazardous situation without assistance of the State before designated state employees may enter the property.

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

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

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

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

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

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

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

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

Should any projects paid for by state funds under this Act later become eligible for federal reimbursement, the federal reimbursement funds shall be deposited in the emergency and budget reserve fund; provided that moneys expended by departments and agencies of the ~~[state]~~ State or counties for projects under this Act that later become eligible for federal reimbursements shall be reimbursed to the department or agency."

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

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

(Approved May 26, 2009.)

Note

1. Edited pursuant to HRS §23G-16.5.