

ACT 182

H.B. NO. 606

A Bill for an Act Relating to County Access to Private Property.

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

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§46- Authority to enter private property; pests or invasive species. Each county of this State, through its employees or authorized agents, may enter private property within the respective county to control or eradicate pests and invasive species pursuant to sections 141-3.6 and 194-5.”

SECTION 2. Section 141-3.6, Hawaii Revised Statutes, is amended to read as follows:

“§141-3.6 Entry of private property to control or eradicate any pests. (a) The department of agriculture or applicable county shall give at least five days notice to the landowner and the occupier of any private property of its intention to enter the property for the control or eradication of a pest. Written notice sent to the landowner’s last known address by certified mail, postage prepaid, return receipt requested, shall be deemed sufficient notice. ~~[In the event that]~~ If certified mail is impractical because the department~~[,]~~ or county, despite diligent efforts, cannot determine land ownership or because of urgent need to initiate control or eradication measures, notice given once in a daily or weekly publication of general circulation, in the county where any action or proposed action will be taken, or notice made as otherwise provided by law, shall be deemed sufficient notice. The notice shall set forth all pertinent information on the pest control program and the procedures and methods to be used for control or eradication.

(b) After notice as required by subsection (a), any member of the department, employee of the county, or any agent authorized by the department or county may enter at reasonable times any private property other than dwelling places to maintain a pest control or eradication program, being liable only for damage caused by acts beyond the scope of the person’s authority, or the per-

son's negligence, gross negligence, or intentional misconduct. If entry is refused, the department member, county employee, or any authorized agent may apply to the district court in the circuit in which the property is located for a warrant to enter on the premises to effectuate the purposes of this chapter. The district court may issue a warrant directing a police officer of the circuit to assist the department member, county employee, or any authorized agent in gaining entry onto the premises during regular working hours or at other reasonable times."

SECTION 3. Section 194-5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Whenever any invasive species identified by the council for control or eradication is found on private property, a department or applicable county or its employees or authorized agents may enter [~~such~~] the 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)."

2. By amending subsections (c) to (f) to read:

"(c) The department or applicable county, or its employees or authorized agents may instead cause notice to be given, and order the owner to control or eradicate the invasive species, if [~~such~~] the 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~~] a reasonable time as the department or county 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, the applicable county, or its employee or authorized agent, within the time specified by the department[~~;~~] or county, or if entry is refused after notice is given pursuant to subsection (a) and, if applicable subsection (b), the department, the applicable county, or its employee or authorized 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, county employee, or [~~its~~] agent in gaining entry onto the premises, and executing measures to control or eradicate the invasive species.

(e) The department or applicable county 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 or county's order.

(f) In no case shall the department, the county, or any officer, employee, or authorized agent thereof be liable for costs in any action or proceeding that may be commenced pursuant to this ~~chapter~~."

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 on July 1, 2017.

(Approved July 11, 2017.)

Note

1. Edited pursuant to HRS §23G-16.5.