



2015 ASSEMBLY BILL 857

February 4, 2016 – Introduced by Representatives CRAIG, CZAJA, GANNON, JACQUE, KNUDSON, MURTHA and SANFELIPPO. Referred to Committee on State Affairs and Government Operations.

1 **AN ACT** *to amend* 94.01 (4), 94.02 (1) and 94.02 (2); and *to create* 94.01 (5) and
2 94.02 (2m) of the statutes; **relating to:** the authority of the Department of
3 Agriculture, Trade and Consumer Protection related to the inspection for, and
4 abatement of, pests on properties that are not agricultural lands or agricultural
5 business premises.

Analysis by the Legislative Reference Bureau

This bill changes the authority of the Department of Agriculture, Trade and Consumer Protection regarding the inspection and abatement of pest infestations on properties other than agricultural lands or agricultural business premises.

Current law grants DATCP a number of powers related to organisms that are injurious to plants, animals, and humans (pests). Under the law, DATCP inspectors may enter any property at any reasonable time for purposes of inspection, investigation, and control of suspected pest infestations; may stop any person or vehicle believed to be carrying plants or other materials infested with pests; and may seize and destroy infested plants and other materials transported in violation of any law, rule, or quarantine.

Under this bill, before a DATCP inspector may enter property other than agricultural lands or agricultural business premises for purposes of inspection, investigation, or control of a suspected pest infestation, DATCP must request the permission of the owner of the property. If the owner does not give permission, DATCP may not proceed without an inspection warrant.

ASSEMBLY BILL 857

Under current law, DATCP may also order the owner of property where a pest infestation occurs to treat the property or treat or destroy infested plants or other material. The owner may appeal the order within ten days. If the owner fails to comply with the order within ten days, DATCP may treat the property or treat or destroy the infested plants or other material and charge the owner for the work.

Under this bill, before DATCP may order the owner of property where a pest infestation occurs, other than agricultural lands or agricultural business premises, to treat the property or treat or destroy infested plants or other material, DATCP must first ask the owner to do so. If the owner does not agree, DATCP may issue an order. The owner has 30 days to appeal the order and, if the owner appeals, DATCP may not treat the premises or treat or destroy the infested plants or other material while the appeal is pending.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 94.01 (4) of the statutes is amended to read:

2 94.01 (4) ~~The Subject to sub. (5), the~~ department, through its authorized agents
3 or inspectors, may enter at all reasonable times any property for purposes of
4 inspection, investigation and control of suspected pest infestations or infections ~~and~~.
5 ~~The department, through its authorized agents or inspectors,~~ may intercept, stop
6 and detain for official inspection any person, truck, vessel, aircraft or other
7 conveyance believed to be carrying plants or other materials infested or infected with
8 pests, and may seize and destroy any such plants or other materials moved, shipped
9 or transported in violation of any law, rule, quarantine notice or order.

10 **SECTION 2.** 94.01 (5) of the statutes is created to read:

11 94.01 (5) Before the department enters, under sub. (4), property other than
12 agricultural lands or agricultural business premises, the department shall seek the
13 permission of the person who owns, controls, or manages the property. If the person

ASSEMBLY BILL 857

1 does not grant permission or cannot be located, the department may not enter the
2 property without an inspection warrant under s. 66.0119.

3 **SECTION 3.** 94.02 (1) of the statutes is amended to read:

4 94.02 (1) If the department finds any agricultural lands or agricultural
5 business premises, or any plants, plant parts, or pest-harboring materials located
6 thereon are so infested or infected with injurious pests as to constitute a hazard to
7 plant or animal life in the state, or any area thereof, it may notify the owner or person
8 having charge of such premises to that effect, and the owner or person in charge shall,
9 within 10 days after such notice, cause the treatment of the premises or the
10 treatment or removal and destruction of infested or infected plants, host plants or
11 other pest-harboring material as directed in the notice. No person may violate the
12 terms of any notice received under this subsection, nor may any damages be awarded
13 to the owner for such treatment, removal or destruction. Any person affected by a
14 notice or order may appeal to the department and request a hearing under s. 94.01
15 (2).

16 **SECTION 4.** 94.02 (2) of the statutes is amended to read:

17 94.02 (2) If the owner or person in charge fails to comply with the terms of the
18 a notice under sub. (1), within 10 days after receiving it, the department or any
19 cooperating local unit of government may proceed to treat the premises or to treat
20 or destroy the infested or infected plants or other material. The expense of such
21 abatement shall be certified to the town, city or village clerk and assessed, collected
22 and enforced against the premises upon which such expense was incurred as taxes
23 are assessed, collected, and enforced, and shall be paid to the cooperating unit of
24 government incurring the expense, or into the general fund if the control work was
25 conducted by the department.

