



## 2013 ASSEMBLY BILL 910

April 3, 2014 – Introduced by Representatives CRAIG, CZAJA, JACQUE, KNUDSON, PRIDEMORE and SANFELIPPO. Referred to Committee on Public Safety and Homeland Security.

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.

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### *Analysis by the Legislative Reference Bureau*

Current law grants the Department of Agriculture, Trade and Consumer Protection (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.

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

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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.

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

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

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

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

15           94.02 (2) If the owner or person in charge fails to comply with the terms of the  
16 a notice under sub. (1), within 10 days after receiving it, the department or any  
17 cooperating local unit of government may proceed to treat the premises or to treat  
18 or destroy the infested or infected plants or other material. The expense of such  
19 abatement shall be certified to the town, city or village clerk and assessed, collected  
20 and enforced against the premises upon which such expense was incurred as taxes  
21 are assessed, collected, and enforced, and shall be paid to the cooperating unit of  
22 government incurring the expense, or into the general fund if the control work was  
23 conducted by the department.

24           **SECTION 5.** 94.02 (2m) of the statutes is created to read:

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1           94.02 (2m) (a) If the department finds that any premises other than  
2 agricultural lands or agricultural business premises, or that any plants, plant parts,  
3 or pest-harboring materials located on premises other than agricultural lands or  
4 agricultural business premises, are so infested or infected with injurious pests as to  
5 constitute a hazard to plant or animal life in the state, or any area of the state, it may  
6 ask the owner or person having charge of the premises to cause the treatment of the  
7 premises or the treatment or removal and destruction of infested or infected plants,  
8 host plants, or other pest-harboring material.

9           (b) If a person does not agree under par. (a) to cause the treatment of the  
10 premises or the treatment or removal and destruction of infested or infected plants,  
11 host plants, or other pest-harboring material, the department may order the person  
12 to take that action. A person receiving an order under this paragraph may appeal  
13 the order within 30 days after the date of service. An appeal stays the order.

14           (c) If a person receiving an order under par. (b) does not appeal the order and  
15 does not take the ordered action within 30 days after the date of service, the  
16 department or a cooperating local unit of government may cause the treatment of the  
17 premises or the treatment or removal and destruction of infested or infected plants,  
18 host plants, or other pest-harboring material and the person is responsible for the  
19 costs of the action.

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(END)