

AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1728

Introduced by Senator Aanestad

February 20, 2004

An act to add Sections 818.3 and 11014.5 to the Government Code, relating to property.

LEGISLATIVE COUNSEL'S DIGEST

SB 1728, as amended, Aanestad. Private property: state agency access.

Existing law provides that every person who, among other acts, willfully commits a trespass by refusing or failing to leave lands immediately upon being requested by the owner of the land is guilty of a misdemeanor.

This bill would prohibit ~~a state agency~~ *the Department of Fish and Game and the Department of Water Resources* from entering upon private property except with the consent of the property owner and pursuant to specified requirements, including that ~~a state agency~~ *the department* notify the owner of private property by telephone at least 72 hours prior to the ~~agency's department's~~ entering the property. The bill would define obtaining consent for this purpose as executing an entry permit with specified terms limiting the property owner's liability. The bill would provide that the owner, within 48 hours after receiving this notice, may notify the ~~state agency~~ *department* of specified conditions on the ~~agency's department's~~ entry upon the property. This bill would further require the ~~state agency~~ *department*, when it enters upon private property, to, among other things, comply with any reasonable condition of entry that the property owner may establish.

~~The bill would provide that its provisions do not apply to the entry upon private property by a law enforcement or other appropriate agency in response to an emergency situation involving a violent crime or an immediate threat to human life.~~

The bill would specify that the Department of Fish and Game and the Department of Water Resources may be liable for damages pursuant to the bill’s provisions for any habitat and wildlife conservation related activity that occurs on private property.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 818.3 is added to the Government Code,
2 to read:

3 818.3. Notwithstanding any other provision of law, ~~a state~~
4 ~~agency may be liable for damages pursuant to Section 11014.5: the~~
5 *Department of Fish and Game and the Department of Water*
6 *Resources may be liable for damages pursuant to Section 11014.5*
7 *for any habitat and wildlife conservation related activity that*
8 *occurs on private property.*

9 SEC. 2. Section 11014.5 is added to the Government Code, to
10 read:

11 ~~11014.5. (a) For purposes of this section, “state agency”~~
12 ~~includes the California State University, and any officer,~~
13 ~~employee, contractor, or agent of a state agency.~~

14 ~~(b) Notwithstanding any other provision of law, a state agency~~
15 *11014.5. (a) As used in this section, “department” means the*
16 *Department of Fish and Game and the Department of Water*
17 *Resources.*

18 *(b) Notwithstanding any other provision of law, the department*
19 *may not enter private property except pursuant to this section.*

20 (c) (1) ~~A state agency~~ *The department* shall notify the owner
21 of private property by telephone at least 72 hours prior to the
22 ~~agency’s department’s~~ *department’s* entering the property. ~~The state agency~~
23 *department* may not enter the property without the owner’s
24 consent, which shall be obtained after the notice required by this
25 paragraph is given.

26 (2) Within 48 hours after receiving notice pursuant to
27 paragraph (1), the property owner may notify the ~~state agency~~



1 ~~department~~ of any condition on the ~~agency's department's~~ entry
2 upon the property, which may include, but not be limited to, any
3 of the following:

4 (A) That entry upon the property be postponed for up to five
5 days from the date requested by the ~~agency department~~.

6 (B) That the property owner accompany the ~~state agency~~
7 ~~department~~ when it enters the property.

8 (C) That access to the property be limited to existing roads or
9 other access points designated by the property owner.

10 (3) For purposes of paragraph (1), ~~a state agency the~~
11 ~~department~~ shall obtain consent by executing an entry permit that
12 does all of the following:

13 (A) Requires the ~~agency department~~ to exercise reasonable
14 precautions to avoid damage and to protect persons and property.

15 (B) Provides that the property owner assumes no liability for
16 any loss or damage to property or injuries to or deaths of agents,
17 contractors, or employees of the property owner caused by the
18 ~~agency's department's~~ exercise of privileges granted in the permit.

19 (C) Provides that nothing in the permit precludes the property
20 owner from filing a claim with the ~~State Board of Control~~
21 ~~California Victim Compensation and Government Claims Board~~
22 for any loss or expense that the property owner or its tenant may
23 suffer caused by or due to exercise by the ~~agency department~~ of the
24 privileges granted by the permit.

25 (D) Provides that the ~~agency department~~ agrees to indemnify
26 and hold the property owner harmless from any damage caused by
27 the ~~agency's department's~~ activities authorized by the permit and
28 to reimburse the property owner for any damage to roads and
29 fences, or other property caused by the ~~agency's department's~~
30 activities that are authorized by the permit.

31 (d) ~~A state agency~~ *The department* shall do all of the following
32 when entering private property:

33 (1) Comply with any reasonable condition of entry that the
34 property owner may establish.

35 (2) Comply with all applicable environmental laws and
36 regulations while conducting work on the property.

37 (3) Carry current official photo identification and present it at
38 any time at the property owner's request.

39 (4) Document the date and time of entry upon and departure
40 from the property.



- 1 (5) Provide the property owner with the name, title, business
2 address, and business telephone number of each person entering
3 the property prior to entrance.
- 4 (6) Notify the property owner of the number of vehicles and the
5 license plate number of each vehicle prior to entrance.
- 6 (7) Obtain approval of the property owner each time a
7 motorized vehicle other than a conventional truck or automobile
8 enters the property.
- 9 (8) Provide a daily report to the property owner regarding any
10 activity that the ~~state agency~~ *department* surveyed or conducted on
11 the property.
- 12 (9) Provide the property owner, within 10 days after the final
13 departure from the property, a written report that includes the
14 findings of any survey or activity conducted on the property.
- 15 (10) Provide the property owner with any report regarding any
16 survey or activity conducted on the property that is finalized after
17 the 10-day report under paragraph (9) is provided.
- 18 (11) Confine its observations, investigations, or other activity
19 to the original purpose for which entry is sought.
- 20 (12) Provide the property owner reasonable compensation for
21 any time the property owner spends accompanying the ~~state~~
22 ~~agency~~ *department* on the property.
- 23 (13) Provide the property owner with compensation for any
24 damages caused by the ~~state agency's~~ *department's* entry upon the
25 property or by violation of this section.
- 26 (e) The property owner shall immediately notify the
27 appropriate authority within the ~~state agency if the state agency~~
28 ~~department if the department~~ violates any of the requirements of
29 this section. The ~~state agency~~ *department* shall respond to the
30 property owner's concerns within 48 hours, during which time the
31 property owner may deny the ~~state agency~~ *department* access to
32 the property. If the property owner is not satisfied with the
33 ~~agency's~~ *department's* response to his or her concerns, then the
34 property owner may deny the ~~state agency~~ *department* access to
35 the property.
- 36 (f) ~~This section shall not apply to the entry upon private~~
37 ~~property by a law enforcement or other appropriate agency in~~



- 1 ~~response to an emergency situation involving a violent crime or an~~
- 2 ~~immediate threat to human life.~~

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