

SENATE BILL NO. 301

INTRODUCED BY MURPHY, T. BROWN, KARY, PETERSON, SHAW, WELBORN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING COUNTY NOXIOUS WEED CONTROL LAWS; CLARIFYING PROCEDURES; REVISING TIME PERIODS FOR COMPLIANCE; AMENDING SECTIONS 7-22-2117, 7-22-2144, 7-22-2146, AND 7-22-2148, MCA; REPEALING SECTIONS 7-22-2123 AND 7-22-2124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Noncompliance with weed control requirements -- general notice.** (1)

(a) If a complaint is made against a landowner or the board has reason to believe that noxious weeds are present on a landowner's property, the board shall notify the landowner by certified mail of the complaint and shall request permission for the board's agent to enter the property to conduct an inspection.

(b) If the landowner has an agent for service on file with the secretary of state, the notice must be given by certified mail to the registered agent.

(c) The landowner or the landowner's representative shall respond ~~to the notice~~ within 10 days of ~~mailing~~ RECEIPT of the notice.

(2) (a) If the board's agent and the landowner or landowner's representative agree to an inspection, the agent and the landowner or representative shall inspect the land at an agreed-upon time.

(b) ~~If within 10 days after sending the certified letter to the address listed on the tax records for the property or to the agent for service the board is unable to determine the owner of the property, the~~ THE board or the board's agent may seek a court order to enter and inspect the land to determine if noxious weeds are present on the property IF:

(i) WITHIN 10 DAYS OF SENDING THE CERTIFIED LETTER TO THE ADDRESS ON THE TAX RECORDS OR TO THE AGENT FOR SERVICE, THE BOARD IS UNABLE TO DETERMINE THE OWNER OF THE PROPERTY; OR

(ii) THE LETTER CANNOT BE DELIVERED BECAUSE THE LANDOWNER OR THE LANDOWNER'S REPRESENTATIVE REFUSES TO SIGN THE RECEIPT OR DOES NOT RESIDE ON THE PROPERTY.

(3) If the board finds noxious weeds on the property during the inspection, the board shall:

(a) seek the landowner's or representative's voluntary compliance with the district weed management



1 program in accordance with [section 2]; or

2 (b) if voluntary compliance is not obtained, notify the landowner or the landowner's representative by
3 certified mail that noxious weeds were found on the property.

4 (4) The notice must contain the language specified in this section.

5 (5) If the board believes it is advisable, the board may post a dated order in a conspicuous place on the
6 property, providing notice that noxious weeds have been found on the property and informing the landowner or
7 landowner's representative of the options for complying with the weed management program pursuant to [section
8 2] and the actions that may be taken under [section 4] if the landowner fails to comply with the weed management
9 program.

10 (6) All correspondence with a landowner or the landowner's representative concerning notifications of
11 weed infestations, including requests made pursuant to subsection (1) to inspect property and notifications of
12 noncompliance, must be made on the uniform notification material provided by the department and must:

13 (a) list the noxious weeds found on the property;

14 (b) provide the legal description of the property;

15 (c) provide the address of the property, if available;

16 (d) state the fact that the presence of the weeds violates state law and that the landowner has 10 days
17 after ~~mailing of~~ RECEIVING the notice to contact the board or its agent;

18 (e) provide the address and phone number for the board;

19 (f) notify the landowner of the landowner's:

20 (i) responsibility to submit a weed management proposal; and

21 (ii) right to request a hearing to contest the finding of noncompliance, including the timeframe for making
22 the request; and

23 (g) specify the actions the board may take if the landowner fails to remove the weeds, including but not
24 limited to the anticipated costs of destroying the weeds and the 25% penalty allowed under [section 4].

25
26 **NEW SECTION. Section 2. Procedures for compliance.** (1) A landowner is in compliance with this
27 part if the landowner submits and the board accepts a written weed management proposal to undertake specific
28 control measures, and the landowner remains in compliance if the terms of the proposal are met. The proposal
29 must require that the landowner or the landowner's representative notify the board as measures in the proposal
30 are taken.

1 (2) In accepting or rejecting a weed management proposal, the board shall consider the economic impact
 2 on the landowner and neighboring landowners, practical biological and environmental limitations, and alternative
 3 control methods to be used.

4
 5 **NEW SECTION. Section 3. Noncompliance -- actions for landowners.** (1) If the board is unable to

6 obtain the landowner's voluntary compliance with the weed management program within 10 days of THE
 7 LANDOWNER'S RECEIPT OF THE notification, the landowner is considered to be in noncompliance and is subject to:

8 ~~—— (a) appropriate control measures pursuant to [section 4]; or~~

9 ~~—— (b) a civil penalty as established by the board and approved by the commissioners following a public~~
 10 ~~hearing after providing notice as required in 7-1-2121.~~

11 (2) (a) Within 10 days after ~~the board has issued a~~ RECEIVING notice to comply with the weed
 12 management program, the landowner may request a hearing before the commissioners if the landowner
 13 disagrees with the weed control measures proposed by the board.

14 (b) If the landowner's objection to the board's action remains after the hearing, the landowner has 10
 15 days to appeal the commissioners' decision to the district court with jurisdiction in the county in which the property
 16 is located.

17 (3) If the landowner has requested a hearing pursuant to subsection (2)(a) or has appealed a hearing
 18 decision pursuant to subsection (2)(b), the board may not take any action to control the noxious weeds until after
 19 the hearing and authorization is provided from the commissioners or the court.

20
 21 **NEW SECTION. Section 4. Noncompliance -- actions by board.** (1) The board may seek a court

22 order to enter upon the infested parcels of the landowner's property if attempts to achieve voluntary compliance
 23 have been exhausted. The board may institute appropriate noxious weed control measures ~~upon order of the~~
 24 ~~court~~, including but not limited to:

25 (a) allowing the local weed district coordinator to implement the appropriate noxious weed control
 26 measures if the actions taken are valued at the current rate paid for commercial management operations in the
 27 district and are reflected in the bill sent to the landowner and the clerk and recorder; or

28 (b) contracting with a commercial applicator as defined in 80-8-102 if the issues of compliance are not
 29 resolved under an agreement proposed and accepted pursuant to [section 2] and:

30 (i) the landowner does not take corrective action within the 10-day period provided for in [section 3]; or

1 (ii) the board does not receive a formal objection or the board of county commissioners does not receive
2 a request for a hearing.

3 (2) A commercial applicator hired under this section shall carry all insurance required by the board.

4 (3) If a court issues an order approving a board's actions, the court retains jurisdiction over the matter:

5 (a) until the actions specified in the weed management plan or court order are complete;

6 (b) for the length of time specified in the order; or

7 (c) for 3 years if the order does not specify a time limit.

8 (4) After instituting appropriate noxious weed control measures, the board shall submit a copy of the bill,
9 including the penalty PROVIDED FOR IN SUBSECTION (4)(B), to the county clerk and recorder and, by certified mail,
10 to the landowner that:

11 (a) covers the costs of the weed control measures;

12 (b) contains a penalty of 25% of the total cost incurred;

13 (c) itemizes the hours of labor, cost of material, equipment time, legal fees, and court costs or includes
14 an invoice from a commercial applicator if the board contracted for weed control pursuant to subsection (1); and

15 (d) specifies that payment is due 30 days from the date the bill is received.

16 (5) If a landowner who received a notice to take corrective action requests an injunction or seeks to stay
17 the corrective action in district court within 10 days of receipt of the notice, the board may not institute control
18 measures until the matter is finally resolved, except in emergency situations.

19 (6) If the board declares an emergency and institutes appropriate measures to control the noxious
20 weeds, the landowner who received the order is liable for costs as provided in subsection (4) only to the extent
21 determined appropriate by the board, the board of county commissioners, or the court that finally resolves the
22 matter.

23
24 **NEW SECTION. Section 5. Direction to department -- notification of landowners.** The department
25 shall distribute informational material about the changes provided for in [this act] within 30 days of [the effective
26 date of this act]. THE DEPARTMENT MAY SELECT THE MANNER IN WHICH THE INFORMATION MAY BE DISTRIBUTED,
27 INCLUDING DISTRIBUTION BY ELECTRONIC MEANS. A board may not take action under [sections 1 through 4] before
28 the department has distributed the materials.

29

30 **Section 6.** Section 7-22-2117, MCA, is amended to read:

1 **"7-22-2117. Violations.** (1) Any person who in any manner interferes with the board or its authorized
2 agent in carrying out the provisions of this part or who refuses to obey an order or notice of the board is liable for
3 a civil penalty in the amount of the actual cost to the board or the estimated cost of removing the noxious weeds
4 from the impacted property in addition to any penalty imposed under ~~7-22-2124~~ [section 4].

5 (2) All fines, bonds, and penalties collected under the provisions of this part must be paid to the county
6 treasurer of each county and placed by the county treasurer into a fund to be known as the noxious weed fund."
7

8 **Section 7.** Section 7-22-2144, MCA, is amended to read:

9 **"7-22-2144. Payment of cost of weed control program.** The total cost of weed control within the
10 district must be paid from the noxious weed fund. The cost of controlling weeds growing along the right-of-way
11 of a state or federal highway must, upon the presentation by the board of a verified account of the expenses
12 incurred, be paid from the state highway fund in compliance with 7-14-2132 and any agreement between the
13 board and the department of transportation. Costs attributed to other lands within the district must be assessed
14 to and collected from the responsible person as set forth in ~~7-22-2124~~ [section 4]."
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16 **Section 8.** Section 7-22-2146, MCA, is amended to read:

17 **"7-22-2146. Financial assistance to persons responsible for weed control.** (1) The commissioners,
18 upon recommendation of the board, may establish a cost-share program for the control of noxious weeds. The
19 board shall develop rules and procedures for the administration of the cost-share program. These procedures
20 may include the cost-share rate or amount and ~~for what~~ the purposes for which cost-share funds may be used.
21

22 (2) (a) Any person may voluntarily enter into a cost-share agreement for the management of noxious
23 weeds on the person's property. The coordinator shall draft a cost-share agreement in cooperation with the
24 person. The agreement must, in the board's judgment, provide for effective weed management.

25 (b) The agreement must specify:

26 (i) costs that must be paid from the noxious weed fund;

27 (ii) costs that must be paid by the person;

28 (iii) a location-specific weed management plan that must be followed by the person; and

29 (iv) reporting requirements of the person to the board.

30 (c) The cost-share agreement must be signed by the person and, upon approval of the board, by the
presiding officer.

1 (3) The agreement must contain a statement disclaiming any liability of the board for any injuries or
 2 losses suffered by the person in managing noxious weeds under a cost-share agreement. If the board later finds
 3 that the person has failed to abide by the terms of the agreement, all cost-share payments and agreements must
 4 be canceled and the provisions of ~~7-22-2124~~ [section 4] apply to that person.

5 (4) (a) When under the terms of any voluntary agreement, whether entered into pursuant to ~~7-22-2123~~
 6 [section 2] or otherwise, or under any cost-share agreement entered pursuant to this section a person incurs any
 7 obligation for materials or services provided by the board, the board shall submit a bill to the person, itemizing
 8 hours of labor, material, and equipment time. The bill must specify and order a payment due date not less than
 9 30 days from the date the bill is sent.

10 (b) A copy of the bill must be submitted by the board to the county clerk and recorder. If the sum to be
 11 repaid by the person billed is not repaid on or before the date due, the county clerk and recorder shall certify the
 12 amount not repaid, with the description of the land to be charged, and shall enter the sum on the assessment list
 13 as a special tax on the land, to be collected in the manner provided in 7-22-2148."
 14

15 **Section 9.** Section 7-22-2148, MCA, is amended to read:

16 **"7-22-2148. Payment of weed control expenses -- tax liability --lien.** (1) ~~(a)~~ The expenses incurred
 17 by the board for noxious weed control undertaken pursuant to ~~7-22-2124~~ [section 4] must be paid by the county
 18 out of the noxious weed fund.

19 ~~(b)~~(2) If the sum to be repaid by the landowner billed under ~~7-22-2124~~ [section 4] is not repaid on or
 20 before the date due, the county clerk shall certify the amount due, with the description of the land to be charged,
 21 and shall enter the amount on the assessment list of the county as a special tax on the land. If the land is exempt
 22 from general taxation for any reason, the amount due and to be repaid may be recovered by direct claim against
 23 the landowner and collected in the same manner as personal taxes.

24 ~~(c)~~(3) All amounts collected pursuant to subsection ~~(1)~~(b) (2) must be deposited in the noxious weed
 25 fund.

26 ~~(2) If a civil penalty is imposed under 7-22-2123 [section 3], the penalty is, until paid in full, a lien in the~~
 27 ~~amount of the penalty on the infested parcel of the property that lies within the district and belongs to the~~
 28 ~~landowner on whom the penalty was imposed."~~

30 NEW SECTION. **Section 10. Repealer.** The following sections of the Montana Code Annotated are

1 repealed:

2 7-22-2123. Procedure in case of noncompliance -- notice.

3 7-22-2124. Destruction of weeds by board -- court order -- deposits.

4

5 NEW SECTION. **Section 11. Codification instruction.** [Sections 1 through 4] are intended to be
6 codified as an integral part of Title 7, chapter 22, part 21, and the provisions of Title 7, chapter 22, part 21, apply
7 to [sections 1 through 4].

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9 NEW SECTION. **Section 12. Effective date.** [This act] is effective on passage and approval.

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