



AN ACT REVISING LOCAL GOVERNMENT NOXIOUS WEED LAWS; REVISING THE PROCEDURES FOR NOTIFICATION AND COMPLIANCE WITH REGARD TO NOXIOUS WEED CONTROL MEASURES; ELIMINATING THE PROVISION FOR AN ADMINISTRATIVE HEARING FOR A PERSON WHO IS ADVERSELY AFFECTED BY A WEED DISTRICT BOARD DECISION; AMENDING SECTIONS 7-22-2123 AND 7-22-2124, MCA; REPEALING SECTION 7-22-2110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-22-2123, MCA, is amended to read:

"7-22-2123. Procedure in case of noncompliance. (1) When a complaint has been made or the board has reason to believe that noxious weeds described in this part are present upon a person's land within the district ~~in violation of the law~~, that person must be notified by mail or telephone of the complaint and the board may request inspection of the land. The board or its authorized agent and the landowner or the landowner's representative shall inspect the land at an agreeable time, within 10 days of notification of the landowner. If within 10 days after reasonable effort notification the board is unable to gain cooperation of the person, the board or its authorized agent may enter and inspect the land to determine if the complaint is valid.

(2) If noxious weeds are found, the board or coordinator shall notify the person or the person's representative and seek voluntary compliance with the district noxious weed management program. If voluntary compliance is ~~not possible~~, ~~notice of noncompliance must be sent to the person by certified mail or cooperation has not occurred within 10 days of the notification required under this subsection, the person is considered to be in noncompliance and is subject to appropriate control measures pursuant to 7-22-2124.~~

~~(3) The notice must specify:~~

~~—— (a) the basis for the determination of noncompliance;~~

~~—— (b) the geographic location of the area of noncompliance, by legal description or other reasonably identifiable description;~~

~~—— (c) measures to be undertaken in order to comply with the district's management criteria;~~

~~_____ (d) a reasonable period of time, not less than 10 days, in which compliance measures must be initiated;~~
and

~~_____ (e) the right of the person to request, within the time specified in subsection (3)(d), an administrative hearing as provided by 7-22-2110.~~

(4)(3) A person is considered to be in compliance if the person submits and the board accepts a proposal to undertake specified control measures and is in compliance as long as the person performs according to the terms of the proposal. The proposal must include a requirement that the person notify the board as measures in the proposal are taken. If the measures proposed to be taken extend beyond the current growing season, the proposal and acceptance must be in writing.

(5)(4) In accepting or rejecting a proposal, the board shall consider the economic impact on the person and the person's neighbors, practical biological and environmental limitations, and alternative control methods to be used."

Section 2. Section 7-22-2124, MCA, is amended to read:

"7-22-2124. Destruction of weeds by board. (1) If corrective action is not taken within the time specified in 7-22-2123(2) and a proposal is not made and accepted ~~or a request for an administrative hearing is not made within the time specified in the notice~~ as provided in 7-22-2123(3), the board may enter upon the person's land and institute appropriate control measures. In that case, the board shall submit a bill to the person, itemizing hours of labor, material, and equipment time, together with a penalty not exceeding ~~50%~~ 25% of the total cost incurred except that a penalty may not be assessed if contact was not made with the landowner or the landowner's representative pursuant to 7-22-2123. When the penalty is collected, it must be credited to the noxious weed fund created pursuant to 7-22-2141 to be used for appropriate control measures pursuant to this section. Labor and equipment must be valued at the current rate paid for commercial management operations in the district. The bill must specify and order a payment due date of 30 days from the date the bill is sent. The board may enter into an agreement with a commercial applicator, as defined in 80-8-102, to destroy the weeds. The commercial applicator shall agree to carry any insurance required by the board.

(2) A copy of the bill must also be submitted by the board to the county clerk and recorder.

(3) If a person receiving an order to take corrective action requests an ~~administrative hearing~~ injunction or stay of the corrective action in district court within 10 days of receipt of the order, the board may not institute

control measures until the matter is finally resolved, except in case of an emergency. In that case, the person is liable for costs as provided in subsection (1) only to the extent determined appropriate by the board, commissioners, or court that finally resolves the matter."

Section 3. Repealer. Section 7-22-2110, MCA, is repealed.

Section 4. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0369, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2009.

Speaker of the House

Signed this _____ day
of _____, 2009.

SENATE BILL NO. 369
INTRODUCED BY J. ESP

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