

HOUSE BILL NO. 133

INTRODUCED BY D. SALOMON

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE PROCESSES AND REQUIREMENTS RELATING TO THE CONTROL OF NOXIOUS WEEDS; AUTHORIZING A WEED CONTROL BOARD TO SEEK A COURT ORDER TO MANAGE NOXIOUS WEEDS; PROVIDING FOR CIVIL PENALTIES FOR FAILURE TO CONTROL NOXIOUS WEEDS; PROVIDING FOR A LIEN ON PROPERTY FOR UNPAID CIVIL PENALTIES; AND AMENDING SECTIONS 7-22-2123, 7-22-2124, AND 7-22-2148, MCA."

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 -- notice. (1) ~~When~~ Whenever 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~~ landowner's land within the district, ~~that person must be notified~~ the board shall attempt to notify the landowner by mail ~~or telephone~~ of the complaint or alleged presence of noxious weeds and the board may request inspection of the land. ~~The~~ IF THE LANDOWNER HAS AN AGENT FOR SERVICE ON FILE WITH THE SECRETARY OF STATE, THE NOTICE MUST BE GIVEN BY MAIL TO THE REGISTERED AGENT. THE LANDOWNER OR THE LANDOWNER'S REPRESENTATIVE SHALL RESPOND TO THE NOTICE WITHIN 10 DAYS. If the board or the board's agent and the landowner or landowner's representative agree to an inspection, the board or its authorized ~~the board's~~ agent and the landowner or the landowner's representative shall inspect the land at an agreeable time; ~~THE INSPECTION MUST OCCUR~~ within 10 3 7 days of notification of the landowner after agreeing to the inspection ~~THE AGREED-UPON INSPECTION DATE.~~ THE AGREED-UPON INSPECTION DATE. ~~If within 40 3 days after notification the board's initial attempt to notify~~ NOTIFYING the landowner the board is unable to contact or gain the cooperation of the person landowner, ~~the board or its authorized~~ the board's agent may SEEK A COURT ORDER TO enter and inspect the land to determine if the complaint is valid noxious weeds are present on the property.

(2) (a) ~~If the board or the board's agent finds noxious weeds are found on the property as a result of the inspection, the board or coordinator~~ the board's agent shall attempt to notify the person landowner or the person's landowner's representative by mail or telephone that noxious weeds were found on the property and shall seek

1 voluntary compliance from the landowner or landowner's representative with the district noxious weed
 2 management program. The board or the board's agent shall MAY also post in a conspicuous place on the
 3 property a dated order providing notice that noxious weeds have been found on the property and directing the
 4 landowner or landowner's representative to comply with the district noxious weed management program.

5 (b) If the board or the board's agent is unable to obtain voluntary compliance or cooperation has not
 6 occurred with the district noxious weed management program by the landowner or landowner's representative
 7 within 10 days of the notification AFTER THE NOTIFICATION OR WITHIN 10 DAYS after posting the notice required under
 8 this subsection (2)(a), the person landowner is considered to be in noncompliance and is subject to appropriate
 9 control measures pursuant to 7-22-2124: or, at the discretion of the board, to a civil penalty equal to \$100 for each
 10 acre or portion of an acre of the landowner's property on which noxious weeds were found; or to both appropriate
 11 control measures and a civil penalty.

12 (c) WITHIN 10 DAYS AFTER THE BOARD HAS ISSUED A NOTICE TO COMPLY WITH THE NOXIOUS WEED
 13 MANAGEMENT PROGRAM, THE LANDOWNER OR LANDOWNER'S REPRESENTATIVE MAY FILE A REQUEST FOR A HEARING IN
 14 COURT IF THE LANDOWNER OR LANDOWNER'S REPRESENTATIVE DISAGREES WITH THE NOXIOUS WEED MANAGEMENT
 15 CONTROL MEASURES PROPOSED TO BE TAKEN BY THE BOARD.

16 (d) IF A REQUEST FOR A HEARING HAS BEEN FILED PURSUANT TO SUBSECTION (2)(C), THE BOARD OR THE
 17 BOARD'S AGENT MAY NOT TAKE ANY ACTION TO CONTROL THE NOXIOUS WEEDS UNTIL AFTER THE HEARING AND
 18 AUTHORIZATION FROM THE COURT.

19 (e)(E) If the board imposes the civil penalty authorized in subsection (2)(b) AND A HEARING IS REQUESTED
 20 IN COURT, the penalty must MAY be imposed SOUGHT for each month or portion of a month during which the
 21 landowner is not in compliance with the district noxious weed management program. A civil penalty imposed
 22 under this section is in addition to any other penalty imposed pursuant to this chapter and is a lien on the property
 23 pursuant to 7-22-2148(3):

24 (3) A person landowner is considered to be in compliance if the person landowner submits and the board
 25 accepts a proposal to undertake specified control measures and is remains in compliance as long as the person
 26 landowner performs according to the terms of the proposal. The proposal must include a requirement that the
 27 person landowner or landowner's representative notify the board as measures in the proposal are taken. If the
 28 measures proposed to be taken extend beyond the current growing season, the proposal and acceptance must
 29 be in writing.

30 (4) In accepting or rejecting a proposal, the board shall consider the economic impact on the person

1 landowner and the ~~person's~~ landowner's neighbors, practical biological and environmental limitations, and
 2 alternative control methods to be used."

3

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

5 **"7-22-2124. Destruction of weeds by board -- court order -- deposits.** (1) (a) If the landowner or
 6 landowner's representative does not take corrective action ~~is not taken~~ within the time specified in 7-22-2123(2)
 7 and a proposal is not made and accepted as provided in 7-22-2123(3), the board may seek a court order to enter
 8 upon the ~~person's~~ landowner's land and institute appropriate noxious weed control measures, which may include
 9 contracting with a commercial applicator pursuant to subsection (1)(b)(iii). ~~IF THE BOARD DECIDES TO SEEK A CIVIL~~
 10 ~~PENALTY UNDER 7-22-2123(2)(B) INSTEAD OF TAKING THE CONTROL MEASURES, THE BOARD SHALL OBTAIN JUDICIAL~~
 11 ~~APPROVAL FROM THE COURT FOR THE PENALTY.~~

12 (b) (i) ~~In that case~~ After obtaining a court order and instituting appropriate noxious weed control
 13 measures, the board shall submit a bill to the ~~person~~ landowner, itemizing hours of labor, cost of material, and
 14 equipment time, or an invoice from a commercial applicator if the board contracted for weed control pursuant to
 15 subsection (1)(b)(iii), together with a penalty not exceeding 25% of the total cost incurred ~~except that a penalty~~
 16 ~~may not be assessed if contact was not made with the landowner or the landowner's representative pursuant to~~
 17 7-22-2123. The board shall provide a copy of the bill, including the penalty, to the county clerk and recorder.
 18 ~~When the penalty is collected, it must be credited to the noxious weed fund created pursuant to 7-22-2141 to be~~
 19 ~~used for appropriate control measures pursuant to this section.~~

20 (ii) Labor, material, and equipment used by the board in instituting appropriate noxious weed control
 21 measures must be valued at the current rate paid for commercial management operations in the district. The bill
 22 submitted to the landowner under subsection (1)(b)(i) must specify and order a payment due date of 30 days from
 23 the date the bill is sent.

24 (iii) The board may enter into an agreement with a commercial applicator, as defined in 80-8-102, to
 25 destroy the weeds. The commercial applicator shall agree to carry any all insurance required by the board.

26 (c) All penalties collected pursuant to this section are in addition to other penalties authorized under this
 27 chapter and must be credited to a noxious weed fund created under 7-22-2141.

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

29 ~~—————(3)(2) If a person receiving~~ landowner who received an order to take corrective action requests an
 30 injunction or stay of the corrective action in district court within 10 days of receipt of the order, the board may not

1 institute control measures until the matter is finally resolved, except in case of an emergency. ~~In that case~~ If the
 2 board declares an emergency and institutes appropriate measures to control the noxious weeds, the ~~person~~
 3 landowner who received the order under 7-22-2123(2)(a) is liable for costs as provided in subsection (1) of this
 4 section only to the extent determined appropriate by the board, the board of county commissioners, or the court
 5 that finally resolves the matter."
 6

7 **Section 3.** Section 7-22-2148, MCA, is amended to read:

8 **"7-22-2148. ~~Tax liability for payment~~ Payment of weed control expenses -- tax liability -- lien. (1)**

9 (a) The expenses referred to in incurred by the board for noxious weed control undertaken pursuant to 7-22-2124
 10 shall ~~must~~ be paid by the county out of the noxious weed fund; and unless,

11 (b) If the sum to be repaid by the ~~person~~ landowner billed under 7-22-2124 is not repaid on or before
 12 the date due, the county clerk shall certify the amount thereof due, with the description of the land to be charged,
 13 and shall enter the ~~same~~ amount on the assessment list of the county as a special tax on the land. If the land ~~for~~
 14 any reason is exempt from general taxation for any reason, the amount of such charge due and to be repaid may
 15 be recovered by direct claim against the ~~lessee~~ landowner and collected in the same manner as personal taxes.

16 (c) ~~When such charges are~~ All amounts collected, ~~they shall be credited to~~ pursuant to subsection (1)(b)
 17 must be deposited in the noxious weed fund.

18 (2) In determining what lands are included as land covered by the special tax assessed pursuant to
 19 subsection (1)(b) and ~~are~~ described in the certificate of the county clerk, it is presumed that all work done upon
 20 any of the land of any one landowner is for the benefit of all of the land within the district belonging to the owner,
 21 together with the parcel upon which the work was done, and the amount certified becomes a tax upon ~~the whole~~
 22 thereof all of the land within the district belonging to the landowner.

23 (3) If a civil penalty is imposed under 7-22-2123, the penalty is, until paid in full, a lien in the amount of
 24 the penalty on all of the property that lies within the district and belongs to the landowner on whom the penalty
 25 was imposed."

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