

## 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) ~~(A) 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 INFORMAL RESOLUTION attempt to notify the landowner by mail or telephone of the complaint or alleged presence of noxious weeds BY NOTIFYING THE LANDOWNER BY MAIL OR TELEPHONE. and the IF THE SITUATION IS NOT RESOLVED AFTER THE INITIAL MAIL OR TELEPHONE CONTACT, THE board may request inspection of the land BY SENDING THE REQUEST BY CERTIFIED MAIL AT LEAST 10 DAYS AFTER THE INITIAL CONTACT IS ATTEMPTED. ~~The~~

(B) 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.

(C) 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 40 3 7 10 days of notification of the landowner after agreeing to the inspection THE AGREED-UPON INSPECTION DATE. If within 40 3 10 days after notification the board's initial attempt to notify NOTIFYING the landowner SENDING A CERTIFIED LETTER TO THE ADDRESS LISTED ON THE TAX RECORDS FOR THE PROPERTY OR THE AGENT OF SERVICE the board is unable to contact or gain the cooperation of the person landowner DETERMINE THE OWNER OF THE PROPERTY OR THE LANDOWNER

1 OBJECTS TO THE INSPECTION, the board or its authorized the board's agent may SEEK A COURT ORDER TO enter and  
 2 inspect the land to determine if ~~the complaint is valid~~ noxious weeds are present on the property.

3 (2) (a) (i) If the board or the board's agent finds noxious weeds are found on the property as a result of  
 4 the inspection, the board or coordinator the board's agent shall attempt to notify the person landowner or the  
 5 person's landowner's representative by CERTIFIED mail or telephone that noxious weeds were found on the  
 6 property and shall seek voluntary compliance from the landowner or landowner's representative with the district  
 7 noxious weed management program.

8 (ii) THE NOTICE MUST CONTAIN THE LANGUAGE SPECIFIED IN THIS SECTION. The

9 (iii) IF OWNERSHIP OF THE LAND IS IN QUESTION OR THE BOARD BELIEVES IT IS ADVISABLE, THE board or the  
 10 board's agent shall MAY also post in a conspicuous place on the property a dated order providing notice that  
 11 noxious weeds have been found on the property and directing the landowner or landowner's representative to  
 12 comply with the district noxious weed management program.

13 (b) If the board or the board's agent is unable to obtain voluntary compliance or cooperation has not  
 14 occurred with the district noxious weed management program by the landowner or landowner's representative  
 15 within 10 days of the notification AFTER THE NOTIFICATION OR WITHIN 10 DAYS after posting the notice required under  
 16 this subsection (2)(a), the person landowner is considered to be in noncompliance and is subject to appropriate  
 17 control measures pursuant to 7-22-2124: or, at the discretion of the board OF COUNTY COMMISSIONERS, to a civil  
 18 penalty equal to \$100 for each acre or portion of an acre of the landowner's property on which noxious weeds  
 19 were found, or to both appropriate control measures and a civil penalty AS ESTABLISHED BY THE BOARD FOLLOWING  
 20 A PUBLIC HEARING AFTER PROVIDING NOTICE AS REQUIRED IN 7-1-2121.

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

25 (ii) IF THE LANDOWNER'S OBJECTION TO THE BOARD'S ACTION REMAINS AFTER THE HEARING, THE LANDOWNER  
 26 HAS 10 DAYS TO APPEAL THE BOARD'S DECISION TO THE DISTRICT COURT HAVING JURISDICTION IN THE COUNTY IN WHICH  
 27 THE PROPERTY IS LOCATED.

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

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

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

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

15 (5) IF A COURT ISSUES AN ORDER APPROVING A BOARD'S ACTIONS, THE COURT RETAINS JURISDICTION OVER THE  
 16 MATTER:

17 (A) UNTIL THE ACTIONS SPECIFIED IN THE WEED MANAGEMENT PLAN OR COURT ORDER ARE COMPLETE;

18 (B) FOR THE LENGTH OF TIME SPECIFIED IN THE ORDER; OR

19 (C) FOR 5 YEARS IF THE ORDER DOES NOT SPECIFY A TIME LIMIT.

20 (6) THE DEPARTMENT SHALL PROVIDE BOARDS WITH A UNIFORM NOTIFICATION FORM THAT MUST BE USED WHEN  
 21 NOTIFYING LANDOWNERS OF POTENTIAL NONCOMPLIANCE WITH THIS PART. THE FORM MUST:

22 (A) LIST THE NOXIOUS WEEDS FOUND ON THE PROPERTY;

23 (B) PROVIDE THE LEGAL DESCRIPTION OF THE PROPERTY;

24 (C) PROVIDE THE ADDRESS OF THE PROPERTY, IF AVAILABLE;

25 (D) STATE THE FACT THAT THE PRESENCE OF THE WEEDS VIOLATES STATE LAW AND THAT THE LANDOWNER HAS  
 26 10 DAYS AFTER MAILING OF THE NOTICE TO CONTACT THE BOARD OR ITS AGENT;

27 (E) PROVIDE THE ADDRESS AND PHONE NUMBER FOR THE BOARD OR ITS AGENT;

28 (F) NOTIFY THE LANDOWNER OF THE LANDOWNER'S:

29 (I) RESPONSIBILITY TO SUBMIT A WEED MANAGEMENT PROPOSAL; AND

30 (II) RIGHT TO REQUEST A HEARING TO CONTEST THE FINDING OF NONCOMPLIANCE, INCLUDING THE TIMEFRAME

1 FOR MAKING THE REQUEST; AND

2 (G) SPECIFY THE ACTIONS THE BOARD MAY TAKE IF THE LANDOWNER FAILS TO REMOVE THE WEEDS, INCLUDING  
 3 BUT NOT LIMITED TO THE ANTICIPATED COSTS OF DESTROYING THE WEEDS, THE 25% PENALTY ALLOWED UNDER  
 4 7-22-2124, AND THE BOARD'S INTENT TO FILE A COURT ACTION TO IMPOSE A CIVIL FINE THAT MAY BECOME A LIEN UPON  
 5 THE PROPERTY."

6

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

8 **"7-22-2124. Destruction of weeds by board -- court order -- deposits.** (1) ~~(a) If the landowner or~~  
 9 ~~landowner's representative does not take~~ corrective action is not taken within the time specified in 7-22-2123(2)  
 10 and a proposal is not made and accepted as provided in 7-22-2123(3), the THE board may seek a court order to  
 11 enter upon the ~~person's~~ landowner's land and institute appropriate noxious weed control measures, which may  
 12 include contracting with a commercial applicator pursuant to subsection ~~(1)(b)(iii)~~ (1)(C)(III), IF:

13 (I) THE LANDOWNER OR THE LANDOWNER'S REPRESENTATIVE DOES NOT TAKE CORRECTIVE ACTION WITHIN THE  
 14 TIME SPECIFIED IN 7-22-2123(2);

15 (II) A PROPOSAL IS NOT MADE AND ACCEPTED AS PROVIDED IN 7-22-2123(3); AND

16 (III) THE BOARD DOES NOT RECEIVE A FORMAL OBJECTION OR A REQUEST FOR A HEARING.

17 (B) IF THE BOARD DECIDES TO SEEK A CIVIL PENALTY UNDER 7-22-2123(2)(B) INSTEAD OF TAKING THE CONTROL  
 18 MEASURES, THE BOARD SHALL OBTAIN JUDICIAL APPROVAL FROM THE COURT FOR THE PENALTY.

19 ~~(b)(C) (i) In that case~~ After TAKING ACTION PURSUANT TO SUBSECTION (1)(A) OR obtaining a court order and  
 20 instituting appropriate noxious weed control measures, the board shall submit a bill to the ~~person~~ landowner;  
 21 itemizing hours of labor, cost of material, and equipment time, or an invoice from a commercial applicator if the  
 22 board contracted for weed control pursuant to subsection ~~(1)(b)(iii)~~, together with THAT COVERS THE COSTS OF THE  
 23 WEED CONTROL MEASURES AND CONTAINS a penalty not exceeding 25% of the total cost incurred ~~except that a~~  
 24 ~~penalty may not be assessed if contact was not made with the landowner or the landowner's representative~~  
 25 ~~pursuant to 7-22-2123.~~ THE BILL MUST ITEMIZE THE HOURS OF LABOR, COST OF MATERIAL, EQUIPMENT TIME, LEGAL  
 26 FEES, AND COURT COSTS OR PROVIDE AN INVOICE FROM A COMMERCIAL APPLICATOR IF THE BOARD CONTRACTED FOR  
 27 WEED CONTROL PURSUANT TO SUBSECTION (1)(C)(III). The board shall provide a copy of the bill, including the  
 28 penalty, to the county clerk and recorder. When the penalty is collected, it must be credited to the noxious weed  
 29 fund created pursuant to 7-22-2141 to be used for appropriate control measures pursuant to this section.

30 (ii) Labor, material, and equipment used by the board in instituting appropriate noxious weed control

1 measures must be valued at the current rate paid for commercial management operations in the district. THE BILL  
 2 MUST REFLECT ACTUAL LEGAL FEES AND COURT COSTS INCURRED BY THE BOARD. The bill submitted to the landowner  
 3 under subsection (1)(b)(i) must specify and order a payment due date of 30 days from the date the bill is sent.

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

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

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

9 ~~—— (3)(2) If a person receiving landowner who received~~ an order to take corrective action requests an  
 10 injunction or stay of the corrective action in district court within 10 days of receipt of the order, the board may not  
 11 institute control measures until the matter is finally resolved, except in case of an emergency. ~~In that case~~ If the  
 12 board declares an emergency and institutes appropriate measures to control the noxious weeds, the person  
 13 landowner who received the order under 7-22-2123(2)(a) is liable for costs as provided in subsection (1) of this  
 14 section only to the extent determined appropriate by the board, the board of county commissioners, or the court  
 15 that finally resolves the matter."

16

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

18 **"7-22-2148. ~~Tax liability for payment~~ Payment of weed control expenses -- tax liability -- lien. (1)**

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

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

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

28 ~~—— (2) In determining what lands are included as land covered by the special tax assessed pursuant to~~  
 29 subsection (1)(b) and are described in the certificate of the county clerk, it is presumed that all work done upon  
 30 any of the land of any one landowner is for the benefit of all of the land within the district belonging to the owner,

1 together with the parcel upon which the work was done, and the amount certified becomes a tax upon the whole  
2 thereof ~~all of the land within the district belonging to the landowner.~~

3 (3)(2) If a civil penalty is imposed under 7-22-2123, the penalty is, until paid in full, a lien in the amount  
4 of the penalty on all of THE INFESTED PARCEL OF the property that lies within the district and belongs to the  
5 landowner on whom the penalty was imposed."

6 - END -