

HOUSE BILL NO. 166

INTRODUCED BY J. ESP

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WEED CONTROL LAWS; REQUIRING
5 COUNTY APPROVAL OF WEED MANAGEMENT PLANS; CLARIFYING DUTY OF ~~SELLER OR SELLER'S~~
6 AGENT A PROPERTY OWNER TO INFORM ~~PROPERTY BUYER~~ THE OWNER'S AGENT AND THE
7 PURCHASER OF WEED INFESTATIONS AND MANAGEMENT; REVISING FUNDING OPTIONS; AMENDING
8 SECTIONS 7-4-2711, 7-22-2103, 7-22-2109, 7-22-2116, 7-22-2120, 7-22-2121, 7-22-2126, 7-22-2141,
9 7-22-2142, 7-22-2153, AND 80-7-814, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

12
13 **Section 1.** Section 7-4-2711, MCA, is amended to read:
14 **"7-4-2711. County attorney to be legal adviser of county and other subdivisions.** (1) The county
15 attorney is the legal adviser of the board of county commissioners. The county attorney shall attend their meetings
16 when required and shall attend and oppose all claims and accounts against the county that are unjust or illegal.
17 The county attorney shall defend all suits brought against the county.
18 (2) The county attorney shall:
19 (a) give, when required and without fee, an opinion in writing to the county, district, and township officers
20 on matters relating to the duties of their respective offices;
21 (b) act as counsel, without fee, for fire districts and fire service areas in unincorporated territories, towns,
22 or villages within the county;
23 (c) when requested by a conservation district pursuant to 76-15-319, act as counsel, without fee;
24 (d) when requested by a weed district pursuant to ~~7-22-2103~~ 7-22-2109, act as counsel, without fee; and
25 (e) when requested by a county hospital board pursuant to 7-34-2115, act as counsel, without fee, unless
26 the legal action requested involves the county commissioners."
27

28 **Section 2.** Section 7-22-2103, MCA, is amended to read:
29 **"7-22-2103. District weed board -- appointment -- commissioner powers.** (1) The commissioners
30 shall appoint a district weed board subject to the provisions of 7-1-201 through 7-1-203.

1 (2) Upon a recommendation from the weed board, the commissioners may appoint a weed coordinator.

2 (3) The commissioners shall approve, approve with revisions, or reject a weed management plan
3 submitted pursuant to 7-22-2121.

4 ~~(2) The board may call upon the county attorney for legal advice and services as it may require."~~

5

6 **Section 3.** Section 7-22-2109, MCA, is amended to read:

7 **"7-22-2109. Powers and duties of board -- use of inmates in county jail work program.** (1) In
8 addition to any powers or duties established in the resolution creating a district weed board, the board may:

9 (a) ~~employ~~ supervise a coordinator and other employees ~~as necessary~~ and provide for their
10 compensation;

11 (b) purchase chemicals, materials, and equipment and pay other operational costs ~~that it determines~~
12 necessary for implementing an effective noxious weed management program. The costs must be paid from the
13 noxious weed fund.

14 (c) determine what chemicals, materials, or equipment may be made available to persons controlling
15 weeds on their own land. The cost for the chemicals, materials, or equipment must be paid by the person and
16 collected as provided in this part.

17 (d) enter into agreements with the department for the control and eradication of any new exotic plant
18 species not previously established in the state that may render land unfit for agriculture, forestry, livestock,
19 wildlife, or other beneficial use if the plant species spreads or threatens to spread into the state;

20 ~~—— (e) enter into agreements with the county sheriff for the use of inmate labor for weed management under~~
21 ~~this part through a county jail work program that is authorized under 7-32-2225 through 7-32-2227;~~

22 ~~(f)~~(e) enter into cost-share agreements for noxious weed management;

23 ~~(g)~~(f) enter into agreements with commercial applicators, as defined in 80-8-102, for the control of
24 noxious weeds;

25 (g) request legal advice and services from the county attorney; and

26 (h) perform other activities relating to weed management.

27 (2) The board shall:

28 (a) administer the district's noxious weed management program;

29 (b) establish management criteria for noxious weeds on all land within the district; and

30 (c) make all reasonable efforts to develop and implement a noxious weed management program

1 covering all land within the district owned or administered by a federal agency."

2

3 **Section 4.** Section 7-22-2116, MCA, is amended to read:

4 **"7-22-2116. Unlawful to permit noxious weeds to propagate -- notice required in sale.** (1) It is
5 unlawful for any person to permit any noxious weed to propagate or go to seed on the person's land, except that
6 any person who adheres to the noxious weed management program of the person's weed management district
7 or who has entered into and is in compliance with a noxious weed management agreement is considered to be
8 in compliance with this section.

9 (2) When property is offered for sale, the ~~person who owns the property~~ seller or the seller's agent
10 PERSON WHO OWNS THE PROPERTY shall notify ~~the owner's agent and~~ THE OWNER'S AGENT AND the purchaser ~~or the~~
11 purchaser's agent of:

12 (a) the existence of noxious ~~weeds~~ weed infestations on the property offered for sale; and

13 (b) ~~the seller's compliance with~~ EXISTENCE OF a noxious weed management program or a noxious weed
14 management agreement as provided in subsection (1)."

15

16 **Section 5.** Section 7-22-2120, MCA, is amended to read:

17 **"7-22-2120. Funding -- reporting requirements -- emergency exemption.** (1) (a) Before a district is
18 ~~eligible to receive from~~ applies to the state ~~for any state funding~~ or federal funding, the district shall provide the
19 department with a ~~comprehensive~~ weed management plan, as provided in 7-22-2121, and with a copy of the
20 resolution creating the board.

21 ~~— (b) Upon receipt of the district's comprehensive weed management plan by the department, the district~~
22 ~~may apply for and receive state funding.~~

23 ~~(c)(b)~~ A After the initial submission of the weed management plan, the district's ~~comprehensive~~ weed
24 management plan must be updated and submitted to the department every 2 years.

25 ~~(d)(c)~~ The department may adopt rules and procedures necessary to implement this section. The rules
26 may not impair the ability of the district to meet its responsibilities.

27 (2) The department may exempt a district from the requirements of subsection (1) if a noxious weed
28 emergency is declared by the governor as provided in 80-7-815."

29

30 **Section 6.** Section 7-22-2121, MCA, is amended to read:

1 **"7-22-2121. Weed management program.** (1) The noxious weed management program must be based
2 on a plan approved by the board and the commissioners.

3 (2) The noxious weed management plan must:

4 (a) specify the goals and priorities of the program;

5 (b) review the distribution and abundance of each noxious weed species known to occur within the
6 district and specify the locations of new infestations and areas particularly susceptible to new infestations;

7 (c) specify pesticide management goals and procedures, including but not limited to water quality
8 protection, public and worker safety, equipment selection and maintenance, and pesticide selection, application,
9 mixing, loading, storage, and disposal; and

10 (d) estimate the personnel, operations, and equipment costs of the proposed program;

11 (e) develop a compliance plan or strategy; and

12 (f) incorporate cooperative agreements established pursuant to 7-22-2151.

13 (3) The board shall provide for the management of noxious weeds on all land or rights-of-way owned
14 or controlled by a county or municipality within ~~the confines of~~ the district. It shall take particular precautions while
15 managing the noxious weeds to preserve beneficial vegetation and wildlife habitat. ~~Where at all~~ When possible,
16 ~~methods for such control shall~~ management must include cultural, chemical, and biological methods.

17 (4) The board may establish special management zones within the district. The management criteria in
18 ~~such~~ those zones may be more or less stringent than the general management criteria for the district."

19

20 **Section 7.** Section 7-22-2126, MCA, is amended to read:

21 **"7-22-2126. Embargo.** (1) The board may establish embargo programs to reduce the spread of noxious
22 weeds within the district or the introduction of noxious weeds into the district.

23 (2) The board shall establish a special embargo program for the movement of forage, as defined in
24 80-7-903, into or out of the county. The board may implement an embargo upon confirmation of a violation, based
25 upon complaint investigations, requests for investigation by the department, or through county investigations, if
26 the forage has not been certified by the state and is being sold as noxious weed seed free, as defined in
27 80-7-903.

28 (3) A person in possession of the forage that is not in compliance with Title 80, chapter 7, part 9, may
29 not ~~move~~ transport or dispose of the forage as noxious weed seed free that is subject to embargo until written
30 permission is obtained from the board. If the forage that is subject to embargo ~~is found to have met all of~~ meets

1 the requirements of the state certification program and the department verifies compliance with the program, the
 2 board shall release the embargo. ~~The board may also release the forage~~ may also be released if the board under
 3 ~~the following conditions:~~

4 (a) ~~verification of~~ verifies the guaranteed delivery back to the original producer, as defined in 80-7-903;

5 (b) approves burning or disposal of the forage ~~in a manner acceptable to the board;~~ or

6 (c) approves other alternatives ~~approved by the board.~~

7 (4) The board shall report all embargoes issued and the final resolution of an embargo imposed pursuant
 8 to a violation of Title 80, chapter 7, part 9, to the department within 48 hours.

9 (5) The person in possession of forage subject to embargo shall comply with the conditions approved
 10 by the board within 30 days. If resolution is not accomplished, the board may condemn the forage and implement
 11 through its employees ~~any of the conditions set forth~~ in this section. If the board proceeds with correction of these
 12 conditions after 30 days, all actual expenses incurred and documented by the board are payable by the producer
 13 unless the person in possession of the forage also has an interest in the forage."
 14

15 **Section 8.** Section 7-22-2141, MCA, is amended to read:

16 **"7-22-2141. Noxious weed fund authorized.** (1) The commissioners ~~of each county in this state~~ shall
 17 create a noxious weed management fund, ~~to be designated the "noxious weed fund"~~ to be used only for purposes
 18 authorized by this part.

19 (2) ~~This fund shall be kept separate and distinct by the county treasurer~~ The fund must be maintained
 20 by the county treasurer in accordance with 7-6-2111."
 21

22 **Section 9.** Section 7-22-2142, MCA, is amended to read:

23 **"7-22-2142. Sources of money for noxious weed fund.** (1) The commissioners may provide sufficient
 24 money in the noxious weed fund for the board to fulfill its duties, as specified in 7-22-2109, by:

25 (a) appropriating money from ~~the general fund of the county~~ any source in an amount of not less than
 26 \$100,000 or an amount equivalent to 1.6 mills levied upon the taxable value of all property; and

27 (b) subject to 15-10-420 and at any time fixed by law for levy and assessment of taxes, levying a tax of
 28 not less than 1.6 mills on the taxable value of all taxable property in the county ~~or by contributing an equivalent~~
 29 ~~amount from another source of not less than the amount received from all county sources in fiscal year 2000 or,~~
 30 ~~for first-class counties, as defined in 7-1-2111, the greater of the amount received from all county sources in fiscal~~

1 year 2000 or \$100,000. The tax levied under this subsection must be identified on the assessment as the tax that
2 will be used for noxious weed control.

3 (2) The proceeds of the noxious weed control tax or other contribution must be used solely for the
4 purpose of managing noxious weeds in the county and must be deposited in the noxious weed fund.

5 (3) Any proceeds from work or chemical sales must revert to the noxious weed fund and must be
6 available for reuse within that fiscal year or any subsequent year.

7 (4) The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds
8 to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed
9 fund.

10 (5) ~~The~~ Subject to 15-10-420, the commissioners may impose a tax for weed control within a special
11 management zone as provided in 7-22-2121(4). For the purposes of imposing the tax, the special management
12 zone boundaries must be established by the board and approved by a majority of the voters within the special
13 management zone. ~~The~~ Pursuant to an election held in accordance with 15-10-425, the amount of the tax must
14 be approved by a majority of the voters within the special management zone, and approval of the zone and the
15 tax may occur simultaneously. Revenue received from a special management zone tax must be spent on weed
16 management projects within the boundaries of the special management zone."

17

18 **Section 10.** Section 7-22-2153, MCA, is amended to read:

19 **"7-22-2153. ~~Voluntary agreements~~ Agreements for control of noxious weeds along roads --**
20 **liability of landowner who objects to weed district control measures -- penalties.** (1) ~~Any person may~~
21 ~~voluntarily seek to enter into an agreement for the management of noxious weeds along a state or county~~
22 ~~highway or road bordering or running through the person's land. The coordinator may draft a voluntary agreement~~
23 ~~upon the request of and in cooperation with the person. However, the agreement must, in the board's judgment,~~
24 ~~provide for effective weed management. The board may enter into an agreement with a landowner that allows~~
25 ~~the landowner to manage noxious weeds along a state or county highway or road that borders or bisects the~~
26 ~~landowner's property.~~

27 (2) ~~The weed management agreement must be signed by the person landowner and, upon approval of~~
28 ~~the board, by the board's presiding officer. An agreement involving a state highway right-of-way must also be~~
29 signed by a representative of the department of transportation.

30 (2)(3) ~~The~~ (3) The agreement must contain a statement disclaiming any liability of the board and, if applicable,

1 the department of transportation for any injuries or losses suffered by the person landowner or anyone acting on
 2 behalf of the landowner in managing noxious weeds ~~on the state or county highway right-of-way~~ pursuant to the
 3 agreement. The signed agreement transfers responsibility for managing noxious weeds on the specified section
 4 of right-of-way from the board to the ~~person signing the agreement~~ landowner who signed the agreement.

5 (4) If the board later finds that the person landowner has failed to ~~adhere to~~ violates the agreement, the
 6 board shall issue an order informing the person landowner that the agreement will be void and that responsibility
 7 for the management of noxious weeds on the right-of-way will revert to the board unless the person landowner
 8 complies with the ~~provisions of the agreement~~ within a specified time period.

9 ~~(3)(5)~~ (a) If a person landowner objects to weed control measures ~~bordering a state or county highway~~
 10 ~~right-of-way along a state or county highway or road that borders or bisects the landowner's property~~ and does
 11 not enter a ~~voluntary~~ into an agreement pursuant to subsections (1) and (2) this section and if the board finds that
 12 the person has failed to provide alternative weed control, the board shall issue an order informing the person
 13 landowner that the management of noxious weeds on the right-of-way will be undertaken by the board unless
 14 the person landowner provides to the board an acceptable plan of alternative weed control within 30 days.

15 (b) ~~A person who does not provide alternative weed control within the time specified in subsection (3)(a)~~
 16 ~~is guilty of Failing to provide alternative weed control pursuant to subsection (5)(a) is a misdemeanor, and, upon~~
 17 ~~conviction, Upon conviction, an offender~~ shall be sentenced pursuant to 46-18-212 and assessed the costs of
 18 weed control provided by the board. A second or subsequent conviction is punishable by a fine of not less than
 19 \$500 or more than \$2,000, plus the costs of weed control provided by the board."
 20

21 **Section 11.** Section 80-7-814, MCA, is amended to read:

22 **"80-7-814. Administration and expenditure of funds.** (1) The provisions of this section constitute the
 23 noxious weed management program.

24 (2) (a) Except as provided in subsection (2)(b), money deposited in the noxious weed management trust
 25 fund may not be committed or expended until the principal reaches \$10 million.

26 (b) In the case of a noxious weed emergency, as provided in 80-7-815, a vote of three-fourths of the
 27 members of each house of the legislature may appropriate principal from the trust fund.

28 (c) Interest or revenue generated by the trust fund, excluding unrealized gains and losses, must be
 29 deposited in the noxious weed management special revenue fund and may be expended for noxious weed
 30 management projects before the principal of the noxious weed management trust reaches \$10 million with a

1 majority vote of each house of the legislature.

2 (d) Any grant funds, regardless of the time at which the grant was awarded, that are not fully expended
3 upon termination of the contract or an extension of the contract, not to exceed 1 year, must revert to the
4 department. The department shall deposit any reverted funds into the noxious weed management trust fund as
5 principal.

6 (3) The principal of the noxious weed management trust fund in excess of \$10 million may be
7 appropriated by a majority vote of each house of the legislature. Appropriations of the principal in excess of \$10
8 million may be used only to fund the noxious weed management program.

9 (4) The department may expend funds under this section through grants or contracts to communities,
10 weed management districts, or other entities that it considers appropriate for noxious weed management projects.
11 A project is eligible to receive funds only if the county in which the project occurs has funded its own weed
12 management program with using one of the following methods, whichever is less:

13 (a) ~~a levy in levying~~ an amount of not less than 1.6 mills or an equivalent amount from another source;
14 or

15 (b) by appropriating an amount of not less than \$100,000 ~~for first-class counties, as defined in 7-1-2111~~
16 from any source.

17 (5) The department may expend funds without the restrictions specified in subsection (4) for the
18 following:

19 (a) employment of a new and innovative noxious weed management project or the development,
20 implementation, or demonstration of any noxious weed management project that may be proposed, implemented,
21 or established by local, state, or national organizations, whether public or private. The expenditures must be on
22 a cost-share basis with the organizations.

23 (b) cost-share noxious weed management programs with local weed management districts;

24 (c) special grants to local weed management districts to eradicate or contain significant noxious weeds
25 newly introduced into the county. These grants may be issued without matching funds from the district.

26 (d) administrative expenses of the department for managing the noxious weed management program
27 and other provisions of this part. The cost of administering the program may not exceed 12% of the total program
28 expenses.

29 (e) administrative expenses incurred by the noxious weed management advisory council;

30 (f) a project recommended by the noxious weed management advisory council, if the department

1 determines that the project will significantly contribute to the management of noxious weeds within the state; and
2 (g) grants to the agricultural experiment station and the cooperative extension service for crop weed
3 management research, evaluation, and education.

4 (6) The agricultural experiment station and cooperative extension service shall submit annual reports
5 on current projects and future plans to the noxious weed management advisory council.

6 (7) In making expenditures under subsections (3) through (5), the department shall give preference to
7 weed management districts and community groups.

8 (8) If the noxious weed management trust fund is terminated by constitutional amendment, the money
9 in the fund must be divided between all counties according to rules adopted by the department for that purpose."
10

11 COORDINATION SECTION. SECTION 12. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 212 AND [THIS
12 ACT] ARE BOTH PASSED AND APPROVED AND IF BOTH CONTAIN A SECTION THAT AMENDS 80-7-814, THEN THE SECTIONS
13 AMENDING 80-7-814 ARE VOID AND 80-7-814 MUST BE AMENDED AS FOLLOWS:

14 **"80-7-814. Administration and expenditure of funds.** (1) The provisions of this section constitute the
15 noxious weed management program.

16 (2) (a) Except as provided in subsection (2)(b), money deposited in the noxious weed management trust
17 fund may not be committed or expended until the principal reaches \$10 million.

18 (b) In the case of a noxious weed emergency, as provided in 80-7-815, a vote of three-fourths of the
19 members of each house of the legislature may appropriate principal from the trust fund.

20 (c) Interest or revenue generated by the trust fund, excluding unrealized gains and losses, must be
21 deposited in the noxious weed management special revenue fund and may be expended for noxious weed
22 management projects before the principal of the noxious weed management trust reaches \$10 million with a
23 majority vote of each house of the legislature.

24 (d) Any grant funds, regardless of the time at which the grant was awarded, that are not fully expended
25 upon termination of the contract or an extension of the contract, not to exceed 1 year, must revert to the
26 department. The department shall deposit any reverted funds into the noxious weed management trust fund as
27 principal.

28 (3) The principal of the noxious weed management trust fund in excess of \$10 million may be
29 appropriated by a majority vote of each house of the legislature. Appropriations of the principal in excess of \$10
30 million may be used only to fund the noxious weed management program.

1 (4) The department may expend funds under this section through grants or contracts to communities,
2 weed management districts, or other entities that it considers appropriate for noxious weed management projects.
3 A project is eligible to receive funds only if the county in which the project occurs has funded its own weed
4 management program ~~with~~ using one of the following methods, whichever is lesser:

5 (a) ~~a levy in~~ levying an amount not less than 1.6 mills or an equivalent amount from another source; or

6 (b) ~~by appropriating~~ an amount of not less than \$100,000 ~~for first-class counties, as defined in 7-1-2114~~
7 from any source.

8 (5) The department may expend funds without the restrictions specified in subsection (4) for the
9 following:

10 (a) employment of a new and innovative noxious weed management project or the development,
11 implementation, or demonstration of any noxious weed management project that may be proposed, implemented,
12 or established by local, state, or national organizations, whether public or private. The expenditures must be on
13 a cost-share basis with the organizations.

14 (b) cost-share noxious weed management programs with local weed management districts;

15 (c) special grants to local weed management districts to eradicate or contain significant noxious weeds
16 newly introduced into the county. These grants may be issued without matching funds from the district.

17 (d) administrative expenses of the department for managing the noxious weed management program
18 and other provisions of this part. The cost of administering the program may not exceed 12% of the total program
19 expenses.

20 (e) administrative expenses incurred by the noxious weed management advisory council;

21 (f) a project recommended by the noxious weed management advisory council, if the department
22 determines that the project will significantly contribute to the management of noxious weeds within the state; and

23 (g) grants to the agricultural experiment station and the cooperative extension service for crop weed
24 management research, evaluation, and education.

25 (6) The agricultural experiment station and cooperative extension service shall submit annual reports
26 on current projects and future plans to the noxious weed management advisory council.

27 (7) In making expenditures under subsections (3) through (5), the department shall give preference to
28 weed management districts and community groups.

29 (8) If the noxious weed management trust fund is terminated by constitutional amendment, the money
30 in the fund must be divided between all counties according to rules adopted by the department for that purpose."

1

2 NEW SECTION. **Section 13. Effective date.** [This act] is effective on passage and approval.

3

- END -