

## HOUSE BILL NO. 37

INTRODUCED BY M. REINHART, F. WILMER, J. FRENCH

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE TERM "NOXIOUS WEEDS"; PROVIDING A NOTIFICATION PROCESS FOR NONCOMPLIANT WEED CONTROL ON STATE LANDS; ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONTROL WEEDS ON STATE LANDS AND BILL FOR COSTS INCURRED; PROVIDING AN ADMINISTRATIVE HEARING PROCESS; GRANTING RULEMAKING AUTHORITY; AND AMENDING SECTION 77-1-101, MCA."

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

**Section 1.** Section 77-1-101, MCA, is amended to read:

**"77-1-101. Definitions.** Unless the context requires otherwise and except for the definition of state land in 77-1-701, in this title, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.

(2) "Commercial or concentrated recreational use" means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) (a) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, and other activities determined by the board to be compatible with the use of state lands.

(b) General recreational use does not include the use of streams and rivers by the public under the stream access laws provided in Title 23, chapter 2, part 3.

(5) "Legally accessible state lands" means state lands that can be accessed by:

(a) dedicated public road, right-of-way, or easement;

(b) public waters;

(c) adjacent federal, state, county, or municipal land if the land is open to public use; or

(d) adjacent contiguous private land if permission to cross the land has been secured from the

landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public, other than those granted permission.

(6) "Noxious weeds" or "weeds" means any exotic plant species established or that may be introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated:

(a) as a statewide noxious weed by rule of the department of agriculture; or

(b) as a district noxious weed by a district weed board organized under 7-22-2103.

~~(6)~~(7) (a) "State land" or "lands" means:

(i) lands granted to the state by the United States for any purpose, either directly or through exchange for other lands;

(ii) lands deeded or devised to the state from any person; and

(iii) lands that are the property of the state through the operation of law.

(b) The term does not include:

(i) lands that the state conveys through the issuance of patent;

(ii) lands that are used for building sites, campus grounds, or experimental purposes by a state institution and that are the property of that institution;

(iii) lands that the board of regents of higher education has authority to dispose of pursuant to 20-25-307;

or

(iv) lands acquired through investments under the provisions of 17-6-201.

(8) "WEED MANAGEMENT" OR "CONTROL" HAS THE MEANING PROVIDED IN 7-22-2101."

**NEW SECTION. Section 2. Notice of noncompliance.** (1) When the department finds that noxious weeds on leased state land or on state land subject to a license or permit have not been controlled as required by 7-22-2116 or that a, THE LEASE, THE LICENSE, OR THE PERMIT, THE DEPARTMENT SHALL CONTACT THE LESSEE, LICENSEE, OR PERMITTEE AND REQUIRE THAT A WEED MANAGEMENT AND CONTROL PROGRAM BE IMPLEMENTED. THE LESSEE, LICENSEE, OR PERMITTEE MAY REQUEST THAT AN INSPECTION OF THE STATE LAND BE MADE WITH DEPARTMENT STAFF. THE DEPARTMENT SHALL SEEK VOLUNTARY COMPLIANCE WITH A NOXIOUS WEED MANAGEMENT AND CONTROL PROGRAM FOR THE STATE LANDS PRIOR TO ISSUING A NOTICE OF NONCOMPLIANCE. IF THE lessee, licensee, or permittee has failed FAILS to implement a weed management and control program when directed by the department, the department shall notify the lessee, licensee, or permittee by mail of the noncompliance. The notice must specify:

- ~~(1)~~(A) the basis for the determination of noncompliance;
- ~~(2)~~(B) the geographic location of the area of noncompliance by legal description or other reasonably identifiable description;
- ~~(3)~~(C) measures to be undertaken in order to comply with the weed control responsibilities of the lease, license, or permit;
- ~~(4)~~(D) a reasonable period of time, not less than ~~40~~ 15 days, in which compliance measures must be initiated; ~~and~~
- ~~(5)~~(E) the right of the person to request, within ~~40~~ 15 days, an administrative hearing as provided by [section 4]; AND

(F) THE RIGHT OF THE PERSON TO REQUEST AN EXTENSION IF THE MEASURES IN SUBSECTION (1)(C) CANNOT BE IMPLEMENTED DUE TO CLIMATIC OR GROWING CONDITIONS.

(2) AT LEAST 2 WEEKS PRIOR TO SENDING A NOTICE OF NONCOMPLIANCE, THE DEPARTMENT SHALL SEND BY CERTIFIED MAIL TO THE LESSEE, LICENSEE, OR PERMITTEE A FINAL NOTICE THAT THE WEED MANAGEMENT AND CONTROL PROGRAM HAS NOT BEEN IMPLEMENTED.

**NEW SECTION. Section 3. Department authorized to control weeds -- billing for weed control.**

(1) If the lessee, licensee, or permittee fails to take corrective action or if a request for an administrative hearing is not made within the time specified in the notice, the department may enter state land covered by the lease, license, or permit and institute appropriate weed control measures. The department may enter into an agreement with a commercial applicator, as defined in 80-8-102, or with the appropriate weed management district organized under 7-22-2102 to control the weeds. The commercial applicator or the weed management district shall agree to carry any insurance required by the department.

(2) The department shall submit a bill to the lessee, licensee, or permittee itemizing the hours of labor, material, and equipment time and listing the actual total cost incurred by the department to take the weed control measures, together with a penalty not exceeding 50% of the total cost. The bill must specify and order a payment due date of 30 days from the date the bill is sent. If payment is not received within 30 days, the department may cancel the lease, license, or permit. Money recovered under this section must be placed in the resource development account established in 77-1-604, except that penalties collected must be distributed annually to the trusts for the lands on which the weed control action was taken.

(3) If a person receiving an order to take corrective action requests an administrative hearing, the department may not institute control measures until the matter is finally resolved, except in case of an emergency.

In an emergency, the person is liable for department costs allowed by this section only to the extent determined appropriate by the director or the court that finally resolves the matter.

NEW SECTION. **Section 4. Administrative hearings.** (1) A person adversely affected by any notice, action, or order of the department may, within the timeframe stated in the notice of noncompliance provided for in [section 2], request an administrative hearing before the director or the director's designee. The director or the director's designee shall hold a hearing within 30 days of the request. Participants may be represented by legal counsel. The director or the director's designee shall make a record of the proceeding and enter an order and findings within 30 days after the hearing.

(2) Within 30 days after the director or the director's designee renders an order and findings, the person adversely affected may file a petition in district court requesting that the order and findings be set aside or modified. The court may affirm, modify, or set aside the order complained of, in whole or in part.

NEW SECTION. **Section 5. Rulemaking authority.** The department may adopt rules to implement [sections 2 through 4].

NEW SECTION. **Section 6. Codification instruction.** [Sections 2 through 5] are intended to be codified as an integral part of Title 77, and the provisions of Title 77 apply to [sections 2 through 5].

NEW SECTION. **Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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