

LEGISLATIVE BILL 731

Approved by the Governor March 3, 2010

Introduced by Utter, 33.

FOR AN ACT relating to the Noxious Weed Control Act; to amend sections 2-954, 2-955, and 2-959, Reissue Revised Statutes of Nebraska; to change provisions relating to noxious weed control funds; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 2-954, Reissue Revised Statutes of Nebraska, is amended to read:

2-954 (1) (a) The duty of enforcing and carrying out the Noxious Weed Control Act shall be vested in the director and the control authorities as designated in the act. The director shall determine what weeds are noxious for purposes of the act. A list of such noxious weeds shall be included in the rules and regulations adopted and promulgated by the director. The director shall prepare, publish, and revise as necessary a list of noxious weeds. The list shall be distributed to the public by the director, the Cooperative Extension Service, the control authorities, and any other body the director deems appropriate. The director shall, from time to time, adopt and promulgate rules and regulations on methods for control of noxious weeds and adopt and promulgate such rules and regulations as are necessary to carry out the act. Whenever special weed control problems exist in a county involving weeds not included in the rules and regulations, the control authority may petition the director to bring such weeds under the county control program. The petition shall contain the approval of the county board. Prior to petitioning the director, the control authority, in cooperation with the county board, shall hold a public hearing and take testimony upon the petition. Such hearing and the notice thereof shall be in the manner prescribed by the Administrative Procedure Act. A copy of the transcript of the public hearing shall accompany the petition filed with the director. The director may approve or disapprove the request. If approval is granted, the control authority may proceed under the forced control provisions of sections 2-953 to 2-955 and 2-958.

(b) The director shall (i) investigate the subject of noxious weeds, (ii) require information and reports from any control authority as to the presence of noxious weeds and other information relative to noxious weeds and the control thereof in localities where such control authority has jurisdiction, (iii) cooperate with control authorities in carrying out other laws administered by him or her, (iv) cooperate with agencies of federal and state governments and other persons in carrying out his or her duties under the Noxious Weed Control Act, (v) with the consent of the Governor, conduct investigations outside this state to protect the interest of the agricultural industry of this state from noxious weeds not generally distributed therein, (vi) with the consent of the federal agency involved, control noxious weeds on federal lands within this state, with reimbursement, when deemed by the director to be necessary to an effective weed control program, (vii) advise and confer as to the extent of noxious weed infestations and the methods determined best suited to the control thereof, (viii) call and attend meetings and conferences dealing with the subject of noxious weeds, (ix) disseminate information and conduct educational campaigns with respect to control of noxious weeds, (x) procure materials and equipment and employ personnel necessary to carry out the director's duties and responsibilities, and (xi) perform such other acts as may be necessary or appropriate to the administration of the act.

(c) The director may (i) temporarily designate a weed as a noxious weed for up to eighteen months if the director, in consultation with the advisory committee created under section 2-965.01, has adopted criteria for making temporary designations and (ii) apply for and accept any gift, grant, contract, or other funds or grants-in-aid from the federal government or other public and private sources for noxious weed control purposes and account for such funds as prescribed by the Auditor of Public Accounts.

(d) When the director determines that a control authority has substantively failed to carry out its duties and responsibilities as a control authority or has substantively failed to implement a county weed control program, he or she shall instruct the control authority regarding the measures necessary to fulfill such duties and responsibilities. The director shall establish a reasonable date by which the control authority shall fulfill such duties and responsibilities. If the control authority fails or refuses to comply with instructions by such date, the Attorney General shall file an

action as provided by law against the control authority for such failure or refusal.

(2) (a) Each control authority shall carry out the duties and responsibilities vested in it under the act with respect to land under its jurisdiction in accordance with rules and regulations adopted and promulgated by the director. Such duties shall include the establishment of a coordinated program for control of noxious weeds within the county.

(b) A control authority may cooperate with any person in carrying out its duties and responsibilities under the act.

(3) (a) Each county board shall employ one or more weed control superintendents. Each such superintendent shall, as a condition precedent to employment, be certified in writing by the federal Environmental Protection Agency as a commercial applicator under the Federal Insecticide, Fungicide, and Rodenticide Act. Each superintendent shall be bonded for such sum as the county board shall prescribe. The same person may be a weed control superintendent for more than one county. Such employment may be for such tenure and at such rates of compensation and reimbursement for travel expenses as the county board may prescribe. Such superintendent shall be reimbursed for mileage at a rate equal to or greater than the rate provided in section 81-1176.

(b) Under the direction of the control authority, it shall be the duty of every weed control superintendent to examine all land under the jurisdiction of the control authority for the purpose of determining whether the Noxious Weed Control Act and the rules and regulations adopted and promulgated by the director have been complied with. The weed control superintendent shall: (i) Compile such data on infested areas and controlled areas and such other reports as the director or the control authority may require; (ii) consult and advise upon matters pertaining to the best and most practical methods of noxious weed control and render assistance and direction for the most effective control; (iii) investigate or aid in the investigation and prosecution of any violation of the act; and (iv) perform such other duties as required by the control authority in the performance of its duties. Weed control superintendents shall cooperate and assist one another to the extent practicable and shall supervise the carrying out of the coordinated control program within the county.

(c) In cases involving counties in which municipalities have ordinances for weed control, the control authority may enter into agreements with municipal authorities for the enforcement of local weed ordinances and may follow collection procedures established by such ordinances. All money received shall be deposited in the noxious weed control authority fund or, if no noxious weed control fund exists, in the county general fund.

Sec. 2. Section 2-955, Reissue Revised Statutes of Nebraska, is amended to read:

2-955 (1) Notices for control of noxious weeds shall consist of two kinds: General notices, as prescribed by rules and regulations adopted and promulgated by the director, which notices shall be on a form prescribed by the director; and individual notices, which notices shall be on a form prescribed by this section. Failure to publish general weed notices or to serve individual notices as provided in this section shall not relieve any person from the necessity of full compliance with the Noxious Weed Control Act and rules and regulations adopted and promulgated pursuant to the act.

(a) General notice shall be published by each control authority, in one or more newspapers of general circulation throughout the area over which the control authority has jurisdiction, on or before May 1 of each year and at such other times as the director may require or the control authority may determine.

(b) Whenever any control authority finds it necessary to secure more prompt or definite control of weeds on particular land than is accomplished by the general published notice, it shall cause to be served individual notice upon the owner of record of such land at his or her last-known address, giving specific instructions and methods when and how certain named weeds are to be controlled. Such methods may include definite systems of tillage, cropping, management, and use of livestock.

Each control authority shall use one or both of the following forms for all individual notices: (i)

..... County Weed Control Authority
OFFICIAL NOTICE

Section 2-952, Reissue Revised Statutes of Nebraska, places an affirmative duty upon every person to control noxious weeds on land under such person's ownership or control. Information received by the control authority, including an onsite investigation by the county weed control superintendent or a deputy, indicated the existence of an uncontrolled noxious weed infestation

on property owned by you at:
The noxious weed or weeds are The method
of control recommended by the control authority is as follows:
.....

Other appropriate control methods are acceptable if approved by the
county weed control superintendent.

Because the stage of growth of the noxious weed infestation on
the above-specified property warrants immediate control, if such infestation
remains uncontrolled after ten days from the date specified at the bottom
of this notice, the control authority may enter upon such property for the
purpose of taking the appropriate weed control measures. Costs for the control
activities of the control authority shall be at the expense of the owner of
the property and shall become a lien on the property as a special assessment
levied on the date of control.

..... Weed Control Superintendent

Dated.....;

or (ii)

..... County Weed Control Authority

OFFICIAL NOTICE

Section 2-952, Reissue Revised Statutes of Nebraska, places an
affirmative duty upon every person to control noxious weeds on land under such
person's ownership or control. Information received by the control authority,
including an onsite investigation by the county weed control superintendent or
a deputy, indicates the existence of an uncontrolled noxious weed infestation
on property owned by you at:

The noxious weed or weeds are The method
of control recommended by the control authority is as follows:
.....

Other appropriate control methods are acceptable if approved by the
county weed control superintendent. If, within fifteen days from the date
specified at the bottom of this notice, the noxious weed infestation on such
property, as specified above, has not been brought under control, you may,
upon conviction, be subject to a fine of \$100.00 per day for each day of
noncompliance beginning on, up to a maximum of fifteen days of
noncompliance (maximum \$1,500).

Upon request to the control authority, within fifteen days from the
date specified at the bottom of this notice, you are entitled to a hearing
before the control authority to challenge the existence of a noxious weed
infestation on property owned by you at

..... Weed Control Superintendent

Dated.....

In all counties having a population of three hundred thousand or
more inhabitants, the control authority may dispense with the individual
notices and may publish general notices if published in one or more newspapers
of general circulation throughout the area over which such control authority
has jurisdiction. Such notice shall be published weekly for four successive
weeks prior to May 1 of each year or at such other times as the control
authority deems necessary. In no event shall a fine be assessed against a
landowner as prescribed in subdivision (3)(a) of this section unless the
control authority has caused individual notice to be served upon the landowner
as specified in this subdivision.

(2) At the request of any owner served with an individual notice
pursuant to subdivision (1)(b)(ii) of this section, the control authority
shall hold an informal public hearing to allow such landowner an opportunity
to be heard on the question of the existence of an uncontrolled noxious weed
infestation on such landowner's property.

(3) Whenever the owner of the land on which noxious weeds are
present has neglected or failed to control them as required pursuant to the
act and any notice given pursuant to subsection (1) of this section, the
control authority having jurisdiction shall proceed as follows:

(a) If, within fifteen days from the date specified on the notice
required by subdivision (1)(b)(ii) of this section, the owner has not taken
action to control the noxious weeds on the specified property and has not
requested a hearing pursuant to subsection (2) of this section, the control
authority shall notify the county attorney who shall proceed against such
owner as prescribed in this subdivision. A person who is responsible for an
infestation of noxious weeds on particular land under his or her ownership
and who refuses or fails to control the weeds on the infested area within the
time designated in the notice delivered by the control authority shall, upon
conviction, be guilty of an infraction pursuant to sections 29-431 to 29-438,
except that the penalty shall be a fine of one hundred dollars per day for
each day of violation up to a total of one thousand five hundred dollars for

fifteen days of noncompliance; or

(b) If, within ten days from the date specified in the notice required by subdivision (1)(b)(i) of this section, the owner has not taken action to control the noxious weeds on the specified property and the stage of growth of such noxious weeds warrants immediate control to prevent spread of the infestation to neighboring property, the control authority may cause proper control methods to be used on such infested land, including necessary destruction of growing crops, and shall advise the record owner of the cost incurred in connection with such operation. The cost of any such control shall be at the expense of the owner. In addition the control authority shall immediately cause notice to be filed of possible unpaid weed control assessments against the property upon which the control measures were used in the register of deeds office in the county where the property is located. If unpaid for two months, the control authority shall certify to the county treasurer the amount of such expense and such expense shall become a lien on the property upon which the control measures were taken as a special assessment levied on the date of control. The county treasurer shall add such expense to and it shall become and form a part of the taxes upon such land and shall bear interest at the same rate as taxes.

Nothing contained in this section shall be construed to limit satisfaction of the obligation imposed hereby in whole or in part by tax foreclosure proceedings. The expense may be collected by suit instituted for that purpose as a debt due the county or by any other or additional remedy otherwise available. Amounts collected under subdivision (3)(b) of this section shall be deposited to the noxious weed control fund of the control authority or, if no noxious weed control fund exists, to the county general fund.

Sec. 3. Section 2-959, Reissue Revised Statutes of Nebraska, is amended to read:

2-959 Control authorities, independently or in combination, may purchase or provide for needed or necessary equipment for the control of weeds, whether or not declared noxious, on land under their jurisdiction and may make available the use of machinery and other equipment and operators at such cost as may be deemed sufficient to cover the actual cost of operations, including depreciation, of such machinery and equipment. All funds so received shall be deposited to the noxious weed control fund or, if no noxious weed control fund exists, to the county general fund. Each control authority shall keep a record showing the procurement and rental of equipment, which record shall be open to inspection by citizens of this state.

Sec. 4. Original sections 2-954, 2-955, and 2-959, Reissue Revised Statutes of Nebraska, are repealed.