

LEGISLATIVE BILL 138

Approved by the Governor May 26, 1987

Introduced by R. Johnson, 34

AN ACT relating to agriculture; to amend sections 2-946.02, 2-952 to 2-954, 2-955, 2-957, 2-958, 2-960 to 2-963, and 2-966, Reissue Revised Statutes of Nebraska, 1943; to define and redefine terms; to change provisions relating to noxious weed control programs; to eliminate a fund; to harmonize provisions; to repeal the original sections, and also sections 2-964 and 2-965, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

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

Section 1. That section 2-946.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-946.02. All cities and villages in this state may provide for, appropriate money for, and make the necessary expenditures for noxious weed control. ~~The director shall cooperate with and advise such cities or villages in such noxious weed control.~~ Nothing in this section shall prevent the formation of a weed control district in cities and villages under the other provisions of section 2-946.01.

Sec. 2. That section 2-952, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-952. It shall be the duty of every person to control the spread of noxious weeds on lands owned or controlled by him or her and to use such methods for that purpose and at such times as are approved and adopted by the Director of Agriculture control authority.

Sec. 3. That section 2-953, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-953. As used in sections 2-952 to 2-965 2-963 and section 5 of this act, unless the context otherwise requires:

(1) Person shall mean any individual, partnership, firm, corporation, company, society, association, the state or any department, agency, or subdivision thereof, or any other public or private

entity;

(2) Control, controlled, or controlling, shall include mean being in charge of or being in possession, whether as owner, lessee, renter, or tenant, under statutory authority, or otherwise;

(3) County board shall mean the county board of commissioners or supervisors;

(4) ~~(3)~~ Noxious weeds shall mean and include any weed designated and listed in regulations promulgated by the Director of Agriculture as noxious Canada Thistle (Circum arvensis (L.) Scop.), Leafy Spurge (Euphorbia esula (L.)), Musk Thistle (Carduus nutans Sub Species Leiophyllus (Petrovic) Stoj. and Stef), and Plumeless Thistle (Carduus acanthoides, (L));

(5) ~~(4)~~ Control authority shall mean the county weed district board, which shall represent all rural area areas and cities, villages, and townships within the county boundaries; and

(6) Director shall mean the Director of Agriculture or his or her designated representative.

The county board of ~~commissioners or supervisors~~ may, following an election in which a majority of the votes cast are in favor of such action, function as and exercise the authority and carry out the duties of the county weed district board. To initiate such an election, the county board of ~~commissioners or supervisors~~ may, by resolution, require the county clerk of such county to have placed upon the ballot at the election next following such resolution, the question, Shall the county weed control authority district board be dissolved and its duties and authority be exercised by the county board?

Yes No

If a majority of the votes cast on this question are opposed to dissolution of the county weed control authority district board, the county shall remain subject to the direction and authority of the elected county weed control authority district board. If a majority of the votes cast on this question are in favor of the dissolution of the county weed control authority district board, the county board shall function as and exercise the authority and carry out the duties of the county weed district board. If, at any time following the dissolution of the county weed control authority district board, county residents, representing at least ten per cent of the votes cast in the preceding general election in such county, submit a petition to the county clerk for reestablishment of the county weed control authority district board as an

independent elected body, the clerk shall place the following question on the next general election ballot: Shall the county weed control authority district board be reestablished and elected independent of other county officials?

Yes No

If a majority of the ballots favor reestablishment of the independent board, the county board shall appoint an initial county weed control authority district board and thereafter the county weed control authority district board members shall be elected in conformity with this section.

When the county board of ~~commissioners or supervisors~~ does not function as the county weed district board, such board shall be composed of five members, three of whom shall be from rural areas and two of whom shall be from cities, villages, or townships. The county board shall appoint members of the authority to fill any vacancy occurring on the county weed district board. The two members from cities, villages, or townships shall thereafter be elected at the general election in 1966 and each four years thereafter, and the three members from rural areas shall be elected at the general election in 1968 and each four years thereafter. Persons seeking election to the authority county weed district board shall be nominated and elected regardless of political affiliation. They shall file in the same manner as is provided by law for county superintendents and shall not be required to pay a filing fee. The members of the county weed district board shall be paid a per diem of not less than twelve dollars for each day actually and necessarily engaged in the performance of their official duties as members of such board and shall be allowed mileage reimbursement on the same basis as provided in section 23-1112 for county officers and employees. ~~In addition to the five-member board, the~~ The chairperson of the county board of ~~supervisors or commissioners~~ may appoint one additional member of from the county board to serve as an ex officio member of the county weed control authority district board to provide coordination between such boards, ~~except ; PROVIDED;~~ that the county board member or commissioner so appointed shall not be entitled to the expense reimbursement allowed county weed district board members. The ex officio member shall possess the same authority as other members, including the right to vote.

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(5) Applicable fund shall mean the fund current at the time the work is performed or the money

is received, and

(6) Director shall mean the Director of Agriculture, or his or her designated representative.

Sec. 4. That section 2-954, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-954. (1)(a) The duty of enforcing sections 2-952 to 2-965 2-963 and section 5 of this act and carrying out their provisions is vested in the director and the control authorities designated in such sections. 2-952 to 2-965 acting under the supervision and direction of the director. The director shall determine what weeds are noxious for the purposes of sections 2-952 to 2-965, and shall compile and keep current a list of such noxious weeds, which list shall be published and incorporated in the rules and regulations of the director. The director The control authority shall, from time to time, adopt and publish methods as official for control of noxious weeds and make adopt, promulgate, and publish such ordinances, rules, and regulations as in his or her judgment are necessary to carry out such the provisions of sections, 2-952 to 2-965. The control authority shall follow the applicable rules and regulations adopted and promulgated by the director issued prior to the effective date of this act, until the control authority adopts and promulgates rules and regulations which shall be no later than January 1, 1988. Whenever special weed control problems exist in a county involving weeds not defined as covered in the noxious weed list in section 2-953, the weed 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, of supervisors or commissioners. Prior to petitioning the director, the control authority, in cooperation with the county board, of commissioners or supervisors, shall hold a public hearing and take testimony upon the petition. Such hearing and the notice thereof shall be in the manner prescribed by Chapter 84, article 9. 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 and if approval is granted, the weed control authority may proceed under the forced control provisions of sections 2-953 to 2-955 and 2-958.

(b) The control authority shall: With director shall investigate the subject of noxious weeds; 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; cooperate with control authorities in carrying out other acts administered by him or her; cooperate with agencies of federal and state governments and persons; in carrying out his or her duties under sections 2-952 to 2-965; and, with the consent of the Governor, in the conduct of investigations outside this state in to protect the interest of the protection of the agricultural industry of this state from noxious weeds not generally distributed therein; with the consent of the federal agency involved, control noxious weeds on federal lands within this state, with or without reimbursement, when deemed by him or her the control authority to be necessary to an effective weed control program; advise and confer as to the extent of noxious weed infestations and the methods determined best suited to the control thereof; call and attend meetings and conferences dealing with the subject of noxious weeds; disseminate information and conduct educational campaigns with respect to control of noxious weeds; procure materials and equipment and employ personnel necessary to carry out his or her the control authority's duties and responsibilities; and perform such other acts as may be necessary or appropriate to the administration of sections 2-952 to 2-965 2-963 and section 5 of this act.

(c) When it is determined by the director that a control authority has failed to carry out any of its duties and responsibilities as a control authority, the director shall perform such duties and responsibilities in the same manner and under the same conditions except that any money collected as provided in subsections (2) and (3) of section 2-955 and the control authority's share of costs under subsection (4) of section 2-955 shall be for deposit to the applicable fund of the director-

(d) When determined by the director that a control authority has failed to control noxious weeds on land owned or controlled by it or to comply with the provisions of section 2-956 as to any article owned or controlled by it, the director shall have proper control measures taken and may hold or prevent the movement of any such article, and the cost of such control work shall be a charge against the owner of the land upon which the cost for control was incurred and may be recovered by suit instituted for that purpose in the name of the director by the Attorney General. The administrative costs incurred by the director in the

administration of a control program upon the default of the weed control authority of a county may be recovered from the county. All funds thus collected shall be deposited to the applicable fund of the director.

(2)(a) Each control authority shall carry out the duties and responsibilities vested in it under sections 2-952 to 2-965 2-963 and section 5 of this act with respect to land under its jurisdiction, in accordance with ordinances, rules, and regulations prescribed by the director control authority. Such duties shall include the establishment, under the general direction of the county control authority, of a coordinated program for control of noxious weeds within such the county.

(b) A control authority may cooperate with any person in carrying out its duties and responsibilities under sections 2-952 to 2-963 and section 5 of this act. 2-965, and may cooperate with the director in carrying out other acts administered by him or her.

(3)(a) Each county board of supervisors or commissioners shall, within thirty days following August 24, 1975, and continually thereafter, employ one or more weed control superintendents. Such superintendents shall, as a condition precedent to employment, and at least annually thereafter, be certified in writing by the director federal Environmental Protection Agency as a commercial applicator under the Federal Insecticide, Fungicide, and Rodenticide Act to be qualified to detect and treat noxious weeds. 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 23-1112 for county officers and employees.

(b) Under the direction of the employing 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 provisions of sections 2-952 to 2-965 2-963 and section 5 of this act and the regulations of the director ordinances, rules, and regulations adopted and promulgated by the control authority pursuant to such sections have been complied with. He or she shall: Compile complete such data on

infested areas and ~~areas~~ controlled ~~areas~~ and such other reports as the ~~direector~~ or control authority may require; 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; investigate or aid in the investigation and prosecution of any violation of sections 2-952 to 2-965 2-963 and section 5 of this act; and 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. ~~County weed control superintendents~~ 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 weed control authority may enter into agreements with municipal authorities for the enforcement of local weed ordinances and may follow collection procedures as may be established by such ~~ordinance~~ or ordinances. All money received shall be deposited in the weed control authority fund.

Sec. 5. Beginning January 1, 1988, each county weed control superintendent shall be required to complete twenty hours of annual continuing education. The cost of continuing education shall be included in the annual budget of the weed control authority. Such continuing education shall focus on the use of equipment, drift control, calibration, proper selection of pesticides, legal responsibilities, and duties of office. Any statewide association of county weed control superintendents or of local governments responsible for weed control may sponsor the required continuing education program. All continuing education programs shall be submitted to the director for review and approval. The sponsoring organization shall maintain records of attendance and notify each county board of the hours completed by its weed control superintendent by January 1 of each year. Failure to complete the required number of hours of continuing education shall subject such weed control superintendent to removal from office by the county board.

Sec. 6. That section 2-955, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-955. (1) Notices for control of noxious weeds shall consist of two kinds: General notices, on a form prescribed by the ~~direector~~, control authority; and individual notices, 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 sections 2-952 to 2-965 2-963 and section 5 of this act and ordinances, rules, and regulations thereunder.

(a) General notice shall be published by each control authority, in one or more ~~legal~~ 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 direct 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 of the following forms for all individual notices: (i)

County Weed Control Authority
NOTICE

Section 2-952, Reissue Revised Statutes of Nebraska, 1943, places an affirmative duty upon every person to control noxious weeds on land under such person's ownership or control. Information received by the ~~board~~ 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 method of control recommended by the control authority is as follows:
.....

Other appropriate control methods are acceptable.

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 weed 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.
Superintendent of Weed Control Authority
Weed Control Superintendent

Dated

.....
Chairperson of Weed Control Board
Chairperson of Weed Control Authority

Dated
Dated

.....
or (ii)

County Weed Control Authority

NOTICE

Section 2-952, Reissue Revised Statutes of Nebraska, 1943, places an affirmative duty upon every person to control noxious weeds on land under such person's ownership or control. Information received by the board 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 method of control recommended by the control authority is as follows:

.....
Other appropriate control methods are acceptable. 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 \$50.00 per day for each day of noncompliance up to a maximum of fifteen days of noncompliance (maximum \$750).

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

.....
Superintendent of Weed Control Authority
Weed Control Superintendent

Dated

.....
Chairperson of Weed Control Board
Chairperson of Weed Control Authority

Dated-
Dated.

In all counties having a population of three hundred thousand or more inhabitants, the control authority ~~or the director~~ may dispense with the individual notices and may publish general notices if published in one or more legal 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 ~~director~~ or 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 sections 2-952 to 2-965 2-963 and section 5 of this 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 fifty dollars per day for each day of violation up to a total of seven hundred fifty 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 weed 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.

Sec. 7. That section 2-957, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-957. To prevent the dissemination of noxious weeds through any article, including machinery, equipment, plants, materials, and other things, the ~~director~~ control authority shall, from time to time, publish a list of noxious weeds which may be disseminated through articles and a list of articles capable of disseminating such weeds; and shall designate treatment of such articles as, in ~~his~~ the control authority's opinion, would prevent such dissemination. Until such article is treated in accordance with the applicable regulations, it shall not be moved from such premises except under and in accordance with the written permission of the control authority having jurisdiction of the area in which such article is located, and the control authority may hold or prevent its movement from such premises. The movement of any such article which has not been so decontaminated, except in accordance with such written permission, may be stopped by the control authority having jurisdiction over the place in which such movement is taking place and further movement and disposition shall only be in accordance with such

control authority's direction.

Sec. 8. That section 2-958, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-958. There is hereby authorized to be established a noxious weed control fund for each control authority, which fund shall be available for expenses authorized to be paid from such fund including necessary expenses of the control authority in carrying out its duties and responsibilities under sections 2-952 to 2-965 2-963 and section 5 of this act. The weed control ~~superintendents~~ superintendent within the county shall (1) ascertain and tabulate each year the approximate amount of land infested with noxious weeds and its location in the county, and shall (2) ascertain and prepare all information required by the county board in the preparation of the county budget including actual and expected revenue from all sources, cash balances, expenditures, amounts proposed to be expended during the year, and working capital, and shall (3) transmit such information tabulated by the control ~~authorities~~ authority to the county board not later than June 1 of each year. On the basis of such information, the county board shall make a tax levy each year for the purpose of paying the expenses authorized to be paid from the noxious weed control fund. Funds so collected shall be deposited to such noxious weed control fund.

Sec. 9. That section 2-960, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-960. If any person shall be dissatisfied with the amount of any charge made against him or her by a control authority for control work or for the purchase of materials or use of equipment, he or she may, within fifteen days after being advised of the amount of the charge, file a protest with the county board. The county board shall hold a hearing to determine whether the charges were appropriate, taking into consideration whether the control measures were conducted in a timely fashion. Following the hearing, the county board director, The director, or his or her designated representative, shall hold a hearing thereon in the county in which the property is located. The director, following a posthearing conference with his or her designated representative, if any, shall have the power to adjust or affirm such charge. If any person is dissatisfied with the decision of the county board or with charges made by the county board for control work performed, director, or with charges made by the

~~director for control work performed by him or her,~~ such person may, within twenty days from the date of such decision or notification of the amount of such charge, file a written notice of ~~appeal~~ protest with the clerk of the district court in which his or her land is located and thereupon an action shall be docketed in such court and tried the same as other civil actions.

Sec. 10. That section 2-961, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-961. ~~The director,~~ any ~~Any~~ control authority, weed control superintendent, or anyone authorized thereby, may enter upon all land under their jurisdiction for the purpose of performing their duties and exercising their powers under sections 2-952 to ~~2-965~~ 2-963 and section 5 of this act, including the taking of specimens of weeds or other materials, without the consent of the person owning or controlling such land and without being subject to any action for trespass or damages, including damages for destruction of growing crops, if reasonable care is exercised.

Sec. 11. That section 2-962, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-962. All individual notices, service of which is provided for in sections 2-952 to ~~2-965~~ 2-963 and section 5 of this act, shall be in writing. Service of such notices shall be in the same manner as service of a summons in a civil action in the district court or by certified mail to the last-known address to be ascertained, if necessary, from the last tax list.

Sec. 12. That section 2-963, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-963. (1) Any person who intrudes upon any land under quarantine or who moves or causes to be moved any article covered by section 2-957 except as provided therein, prevents or threatens to prevent entry upon land as provided in section 2-961, or interferes with the carrying out of the provisions of sections 2-952 to ~~2-965,~~ 2-963 and section 5 of this act shall be guilty of a Class IV misdemeanor in addition to any penalty imposed pursuant to section 2-955.

(2) It shall be the duty of the county attorney of the county in which any violation of section 2-955 or this section occurs, when notified of such violation by the county board or ~~weed~~ control authority, to cause appropriate proceedings to be instituted and pursued in the appropriate court without delay.

Sec. 13. That section 2-966, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-966. Title to any real estate standing in the name of any noxious weed control district created under the provisions of sections 2-910 to 2-951, which district was dissolved by the repeal of such sections by Laws 1965, chapter 7, section 15, is hereby quieted in the county in which such real estate is located. Any such real estate shall be held by the county for the use of the ~~county~~ weed control authority created pursuant to sections 2-952 to ~~2-965~~ 2-963 and section 5 of this act, or may be sold and the proceeds from such sale deposited to the credit of the ~~county noxious weed control fund as provided by section 2-965~~ control authority.

Sec. 14. That original sections 2-946.02, 2-952 to 2-954, 2-955, 2-957, 2-958, 2-960 to 2-963, and 2-966, Reissue Revised Statutes of Nebraska, 1943, and also sections 2-964 and 2-965, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 15. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.