

## LEGISLATIVE BILL 869

Approved by the Governor April 9, 2004

Introduced by Agriculture Committee: Kremer, 34, Chairperson; Burling, 33; Chambers, 11; Cunningham, 40; Erdman, 47; Mossey, 3; Preister, 5; Vrtiska, 1

AN ACT relating to agriculture; to amend sections 2-945.01, 2-953, 2-954, 2-10,117, 81-201, and 81-201.05, Reissue Revised Statutes of Nebraska, and section 2-958, Revised Statutes Supplement, 2002; to change noxious weed control provisions; to create and eliminate funds; to provide for a grant program; to authorize fund transfers; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 2-945.01, Reissue Revised Statutes of Nebraska, is amended to read:

2-945.01. Sections 2-945.01 to 2-966 and sections 4 and 5 of this act shall be known and may be cited as the Noxious Weed Control Act.

Sec. 2. Section 2-953, Reissue Revised Statutes of Nebraska, is amended to read:

2-953. For purposes of the Noxious Weed Control Act:

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

(2)(a) Control, with respect to land, ~~shall mean~~ means the authority to operate, manage, supervise, or exercise jurisdiction over or any similar power. The state or federal government or a political subdivision shall not be deemed to control land on which it has an easement as long as it does not otherwise operate, manage, supervise, or exercise jurisdiction over the land; and

(b) Control, with respect to weeds, ~~shall mean~~ means the prevention, suppression, or limitation of the growth, spread, propagation, or development or the eradication of weeds;

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

(4) Noxious weeds ~~shall mean~~ means and ~~include~~ includes any weeds designated and listed as noxious in rules and regulations adopted and promulgated by the director;

(5) Control authority ~~shall mean~~ means the county weed district board or the county board if it is designated as the control authority pursuant to section 2-953.01, which board shall represent all rural areas and cities, villages, and townships within the county boundaries; ~~and~~

(6) Director ~~shall mean~~ means the Director of Agriculture or his or her designated representative; and

(7) Weed management entity means an entity recognized by the director as being established by and consisting of local stakeholders, including tribal governments, for the purpose of controlling or eradicating harmful, invasive weeds and increasing public knowledge and education concerning the need to control or eradicate harmful, invasive weeds.

Sec. 3. 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 weed control authority fund.

Sec. 4. The Noxious Weed and Invasive Plant Species Assistance Fund is created. The fund may be used to carry out the purposes of section 5 of this act. The State Treasurer shall credit to the fund any money appropriated to the fund by the Legislature and any money received as gifts or grants or other private or public funds obtained for the purposes set forth in section 5 of this act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 5. (1) From funds available in the Noxious Weed and Invasive Plant Species Assistance Fund, the director may administer a grant program to assist local control authorities and other weed management entities in the cost of implementing and maintaining noxious weed control programs and in addressing special weed control problems. The director shall receive applications by local control authorities and weed management entities for assistance under this section and, in consultation with the advisory committee created under section 2-965.01, award grants for any of the following eligible purposes:

(a) To conduct applied research to solve locally significant weed management problems;

(b) To demonstrate innovative control methods or land management practices which have the potential to reduce landowner costs to control noxious weeds or improve the effectiveness of noxious weed control;

(c) To encourage the formation of weed management entities;

(d) To respond to introductions or infestations of invasive plants that threaten or potentially threaten the productivity of cropland and rangeland over a wide area;

(e) To respond to introductions and infestations of invasive plant species that threaten or potentially threaten the productivity and biodiversity of wildlife and fishery habitats on public and private lands;

(f) To respond to special weed control problems involving weeds not included in the list of noxious weeds promulgated by rule and regulation of the director if the director has approved a petition to bring such weeds under the county control program;

(g) To conduct monitoring or surveillance activities to detect, map, or determine the distribution of invasive plant species and to determine susceptible locations for the introduction or spread of invasive plant species; and

(h) To conduct educational activities.

(2) The director shall select and prioritize applications for assistance under this section based on the following considerations:

(a) The seriousness of the noxious weed or invasive plant problem or potential problem addressed by the project;

(b) The ability of the project to provide timely intervention to save current and future costs of control and eradication;

(c) The likelihood that the project will prevent or resolve the problem or increase knowledge about resolving similar problems in the future;

(d) The extent to which the project will leverage federal funds and other nonstate funds;

(e) The extent to which the applicant has made progress in addressing noxious weed or invasive plant problems;

(f) The extent to which the project will provide a comprehensive approach to the control or eradication of noxious weeds;

(g) The extent to which the project will reduce the total population or area of infestation of a noxious weed;

(h) The extent to which the project uses the principles of integrated vegetation management and sound science; and

(i) Such other factors that the director determines to be relevant.

(3) Nothing in this section shall be construed to relieve control authorities of their duties and responsibilities under the Noxious Weed Control Act or the duty of a person to control the spread of noxious weeds on lands owned and controlled by him or her.

(4) The Department of Agriculture may adopt and promulgate necessary

rules and regulations to carry out this section.

Sec. 6. Section 2-958, Revised Statutes Supplement, 2002, is amended to read:

2-958. (1) ~~There is hereby authorized to be established a~~ A noxious weed control fund ~~may be established~~ 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 the Noxious Weed Control Act. The weed control superintendent within the county shall (a) ascertain and tabulate each year the approximate amount of land infested with noxious weeds and its location in the county, (b) 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 (c) transmit such information tabulated by the control authority to the county board not later than June 1 of each year.

(2) ~~There is hereby created the~~ The Noxious Weed Cash Fund ~~is created~~. The fund shall consist of proceeds raised from fees imposed for the registration of pesticides and earmarked for the fund pursuant to section 2-2634, funds credited or transferred pursuant to sections 81-201 and 81-201.05, any gifts, grants, or donations from any source, and any reimbursement funds for control work done pursuant to subdivision (1)(b)(vi) of section 2-954. An amount from the General Fund may be appropriated annually for the Noxious Weed Control Act. The fund shall be administered and used by the director to maintain the noxious weed control program and for expenses directly related to the program. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

~~On or before July 15, 2001, the State Treasurer shall transfer fifty thousand dollars from the Noxious Weed Cash Fund to the Livestock Waste Management Cash Fund. On or before July 15, 2002, the State Treasurer shall transfer fifty thousand dollars from the Noxious Weed Cash Fund to the Livestock Waste Management Cash Fund.~~

Sec. 7. Section 2-10,117, Reissue Revised Statutes of Nebraska, is amended to read:

2-10,117. All money received from any source pursuant to the Plant Protection and Plant Pest Act shall be remitted by the department to the State Treasurer and by the State Treasurer credited to the Plant Protection and Plant Pest Cash Fund which is hereby created. The fund also shall include funds transferred pursuant to section 81-201.05. The fund shall be used by the department to aid in defraying the expenses of administering the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 8. Section 81-201, Reissue Revised Statutes of Nebraska, is amended to read:

81-201. The Department of Agriculture shall have power (1) to encourage and promote, in every practicable manner, the interest of agriculture; (2) to promote methods of conducting the industry of agriculture with a view to increasing the production and facilitating the distribution thereof at the least cost; (3) to collect and publish statistics relating to the production and marketing of agricultural products, so far as such statistical information may be of value to the agricultural and allied interests of the state, and to cooperate with the federal government in the matter of collecting and publishing such statistical information; (4) to publish and distribute the Weeds of the Great Plains book Nebraska Weed Book and the Nebraska Insect Book and supplemental inserts thereto, for sale and distribution to the public. ~~for an amount not to exceed the cost of publication and distribution.~~ All money collected from the sale of the publications shall be paid remitted to the State Treasurer and deposited in the Weed and Insect Books Cash Fund credited as provided in section 81-201.05; (5) to inquire into the causes of contagious, infectious, and communicable diseases among domestic animals and the means for the prevention and cure of the same; (6) to execute and enforce all laws relating to matters within its jurisdiction and to adopt necessary rules and regulations for the administration and enforcement of such laws; and (7) to employ special investigators who shall be appointed deputy state sheriffs by the Governor and who shall, upon qualifying for such office, possess all the powers which attach to such office, except that their powers and duties shall be restricted to the enforcement of the laws of the State of Nebraska within the jurisdiction of the Department of Agriculture.

Sec. 9. Section 81-201.05, Reissue Revised Statutes of Nebraska, is

amended to read:

81-201.05. (1) The Weed Book Cash Fund is created. Any money in the Weed and Insect Books Cash Fund on the effective date of this act shall be transferred to the Weed Book Cash Fund. Upon such transfer, the following amounts shall be transferred from the Weed Book Cash Fund: (a) Twenty-five thousand dollars to the Noxious Weed Cash Fund; and (b) thirty-seven thousand eight hundred dollars to the Plant Protection and Plant Pest Cash Fund. On July 1, 2005, July 1, 2006, July 1, 2007, July 1, 2008, and July 1, 2009, if there are sufficient funds available, twenty-five thousand dollars shall be transferred from the Weed Book Cash Fund to the Noxious Weed Cash Fund. Any money in the Weed Book Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The sale price of each Weeds of the Great Plains book sold by the Department of Agriculture shall be credited as follows:

(a) Seventy-five percent to the Weed Book Cash Fund to aid in defraying the cost of publishing, preparing, and distributing such books and any supplemental inserts to such books; and

(b) Twenty-five percent to the Noxious Weed Cash Fund. There is hereby created a fund to be known as the Weed and Insect Books Cash Fund. All money credited to the fund shall be used by the Department of Agriculture to aid in defraying the cost of publishing, preparing, and distributing the Nebraska Weed Book, the Nebraska Insect Book, and any supplemental inserts to such books. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 10. Original sections 2-945.01, 2-953, 2-954, 2-10,117, 81-201, and 81-201.05, Reissue Revised Statutes of Nebraska, and section 2-958, Revised Statutes Supplement, 2002, are repealed.