

During the 2009 – 10 interim a stakeholders group representing weed supervisors, counties, cities and the Department of Agriculture was formed to review and make recommended changes to the Noxious Weed Control Act to address 2009 amendment that attempted to shorten the adjudication process when landowners are in violation of the Act. This became necessary when a district court judge advised a county attorney that if he brought charges against a landowner the judge would throw the case out because the process in law violated a landowners due process rights. In effect, we have not had an enforceable Noxious Weed Control Act since the passage of SB 316 in 2009.

The stakeholders also saw this as an opportunity to make some updates and improvements to the administrative aspect of the Noxious Weed Control Act. HB 133 was brought at the request of the Department of Agriculture and was intended to address the ENFORCEMENT aspect of the Act, while HB 166 was brought by the Weed Control Association and MACo to address the ADMINISTRATIVE aspect of the Act.

HB 166 is pretty much a “vanilla” bill, meaning that there is little substantive policy change in the bill. It is intended to make some vague language clearer and more understandable, particularly in the context of hiring and firing authority, approval authority of a county Noxious Weed Control Plan, the amount of local funding requirements to be eligible for grants for the Noxious Weed Control Trust Fund, cleans up the language for agreements between landowners and the weed district should the landowner wish to provide control in the road right-of-way alongside his property, rather than the district, makes current law clearer about a sellers obligation to notify a purchaser of the existence, and compliance with, a specific weed management agreement that may be in place between the landowner and weed district as well as addressing how weed funds must be handled and expended.

HB 166 is to clean up, modernize and clarify ADMINISTRATION of a county weed control district. It does not grow government. It does not infringe on property rights. It does not increase taxes.

The bill was heard when few of the stakeholders were able to attend so we do not believe the bill received sufficient explanation and discussion during the hearing so understandably committee members were less than fully informed about the provisions of the bill.

The Montana Association of Counties and the Montana Weed Control Association respectfully request the House Agriculture Committee re-consider action on this bill and pass it out of your committee.

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## 2011 Montana Legislature

[Additional Bill Links](#)   [PDF \(with line numbers\)](#)

HOUSE BILL NO. 166

INTRODUCED BY ESP

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WEED CONTROL LAWS; REQUIRING COUNTY APPROVAL OF WEED MANAGEMENT PLANS; CLARIFYING DUTY OF SELLER OR SELLER'S AGENT TO INFORM PROPERTY BUYER OF WEED INFESTATIONS AND MANAGEMENT; REVISING FUNDING OPTIONS; AMENDING 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, 7-22-2142, 7-22-2153, AND 80-7-814, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 7-4-2711, MCA, is amended to read:

**"7-4-2711. County attorney to be legal adviser of county and other subdivisions.** (1) The county attorney is the legal adviser of the board of county commissioners. The county attorney shall attend their meetings when required and shall attend and oppose all claims and accounts against the county that are unjust or illegal. The county attorney shall defend all suits brought against the county.

(2) The county attorney shall:

(a) give, when required and without fee, an opinion in writing to the county, district, and township officers on matters relating to the duties of their respective offices;

(b) act as counsel, without fee, for fire districts and fire service areas in unincorporated territories, towns, or villages within the county;

(c) when requested by a conservation district pursuant to 76-15-319, act as counsel, without fee;

(d) when requested by a weed district pursuant to ~~7-22-2103~~ 7-22-2109, act as counsel, without fee;

and

(e) when requested by a county hospital board pursuant to 7-34-2115, act as counsel, without fee, unless the legal action requested involves the county commissioners."

**Section 1 - Corrects a reference**

**Section 2.** Section 7-22-2103, MCA, is amended to read:

**"7-22-2103. District weed board -- appointment -- commissioner powers.** (1) The commissioners shall appoint a district weed board subject to the provisions of 7-1-201 through 7-1-203.

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

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

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

**Section 2 – Clarifies the appointment authority of the weed supervisor. It provides that the weed board makes a recommendation to the county commission. The county commission, as the actual employer, then makes an appointment. Current law is unclear and has led to some disagreements between weed board members and county commissioners. Strikes the provision that the county attorney is the legal advisor of the weed district, however this is restated in Section 3 and is also stated in Section 1 under the duties of the county attorney.**

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

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

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

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

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

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

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

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

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

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

(h) perform other activities relating to weed management.

(2) The board shall:

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

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

(c) make all reasonable efforts to develop and implement a noxious weed management program covering all land within the district owned or administered by a federal agency."

**Section 3 – Clarifies that the county is the employer of the weed supervisor and other weed district employees, but that they are supervised by the county weed board. Restates that that the county attorney serves as legal advisor which was moved to this section from 7-4-2711. Strikes the outdated reference to a county jail work program.**

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

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

(2) When property is offered for sale, the ~~person who owns the property~~ seller or the seller's agent shall notify ~~the owner's agent and the purchaser~~ or the purchaser's agent of:

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

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

**Section 4 – Clarifies the responsibility of a seller of real estate to provide notice of the presence of noxious weeds. When the provision for the seller's agent was added, we did not understand that language imparted an affirmative duty upon a real estate agent. We recommend that provision be stricken. The new subsection (b) simply says that when a landowner offers land for sale they must advise the purchaser of the status of any weed management plan that may be in existence pursuant to current law in subsection (1).**

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

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

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

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

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

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

**Section 5 – This places into statute what is already in practice. Current law requires a county commission to create a weed board which is set forth the process in 7-1-201, 202 and 203 MCA. A weed district is already required to submit a copy of its weed management plan to the**

**department. This adds that a copy of the county resolution creating the weed board also be sent to the department of agriculture. This is already being provided by most weed districts.**

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

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

(2) The noxious weed management plan must:

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

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

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

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

(e) develop a compliance plan or strategy; and

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

(3) The board shall provide for the management of noxious weeds on all land or rights-of-way owned or controlled by a county or municipality within ~~the confines of~~ the district. It shall take particular precautions while managing the noxious weeds to preserve beneficial vegetation and wildlife habitat.

~~Where at all~~ When possible, ~~methods for such control shall~~ management must include cultural, chemical, and biological methods.

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

**Section 6 – Clarifies that both the county weed board and county commission has to approve the district's weed management plan. This is to provide a check and balance.**

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

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

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

(3) A person in possession of the forage that is not in compliance with Title 80, chapter 7, part 9, may not ~~move~~ transport or dispose of the forage as noxious weed seed free that is subject to embargo until written permission is obtained from the board. If the forage that is subject to embargo ~~is found to have met all of~~ meets the requirements of the state certification program and the department verifies compliance with the program, the board shall release the embargo. The ~~board may also release the forage~~ may also be released if the board ~~under the following conditions:~~

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

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

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

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

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

<b>Section 7 – Modernizes the language but makes no actual changes to current law.</b>
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**Section 8.** Section 7-22-2141, MCA, is amended to read:

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

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

**Section 8 - Makes it clear that all funds of the district are to be deposited with the county treasurer and that these funds can only be used for noxious weed control purposes. We have encountered the situation where these funds have been diverted to other uses, which is inappropriate and unacceptable. There is an accounting principle for public funds known as "fund integrity". This principle simply states that if tax money or other funds are raised for a specific purpose, they must be used for that purpose. This is why the reference to 7-6-2111 was added to make it clear that weed funds must be kept separate and cannot be used for other purposes. We have also encountered some problems with weed district board members thinking that they can deposit public funds into separate bank accounts so they are not then subject to the budgeting process.**

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

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

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

(b) subject to 15-10-420 and at any time fixed by law for levy and assessment of taxes, levying a tax of not less than 1.6 mills on the taxable value of all taxable property in the county ~~or by contributing an equivalent amount from another source of not less than the amount received from all county sources in fiscal year 2000 or, for first-class counties, as defined in 7-1-2111, the greater of the amount received from all county sources in fiscal year 2000 or \$100,000.~~ The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control.

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

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

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

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

**Section 9 – The stricken language is a provision was added in 2001 that was intended to provide an incentive to counties to increase noxious weed control funding about the minimum amount of at least 1.6 mills. Because of the wide disparity of the value of a mill from county to county, the two-pronged test was added that the levy for noxious weed control be an amount greater than what was levied in 2000 or \$100,000. The simple fact is that nobody has a clue how much was levied in 2000 so this provision has become meaningless. Separate legislation added the “subject to 15-10-420, which is the entities overall property tax limitation. This section also includes the reference to current law related to submitting a question of increased taxation to the voters. This is already the case but placing the reference here simply reminds people of the process that must be followed to increase taxes. When the dust settled, the changes in this section are of little substance but make the language much clearer and understandable by saying that if a county is to be eligible for grants from the Noxious Weed Trust, the county must provide at least \$100,000 or an amount equivalent to 1.6 mills, whichever is less, from ANY source for noxious weed control efforts. It does not impose a requirement for ANY minimum level of taxation or expenditure.**

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

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

agreement with a landowner that allows the landowner to manage noxious weeds along a state or county highway or road that borders or bisects the landowner's property.

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

~~(2)(3)~~ The agreement must contain a statement disclaiming any liability of the board and, if applicable, the department of transportation for any injuries or losses suffered by the ~~person~~ landowner or anyone acting on behalf of the landowner in managing noxious weeds ~~on the state or county highway right-of-way pursuant to the agreement.~~ The signed agreement transfers responsibility for managing noxious weeds on the specified section of right-of-way from the board to the ~~person signing the agreement~~ landowner who signed the agreement.

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

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

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

**Section 11 – strikes the “voluntary” language because all agreements are voluntary anyway. A person cannot be compelled to enter into an agreement that they do not want to inter into. Adds**

**the language that a person may enter into an agreement to control weeds along county road rights-of-way. This is needed because some landowners grow organic crops. Using chemicals in this close of proximity to those crops makes them ineligible to be certified as organic. This will allow landowners to enter into an agreement to use non-chemical means to control noxious weeds in road rights-of-way along their property. However if a person fails to comply with the terms of the agreement, the weed control district may then control any noxious weeds in the road right-of-way ONLY. The penalty provision for failing to control noxious weeds is current law.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 11 – Harmonizes the language with the amended language in Section 9 related to eligibility to receive grant funding from the Noxious Weed Trust**

NEW SECTION. **Section 12. Effective date.** [This act] is effective on passage and approval.

- END -