

SESSION OF 2018

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2583

As Amended by House Committee on
Agriculture

Brief*

HB 2583 would create the Noxious Weed Act (Act) and repeal existing noxious weeds law.

Definitions (New Section 1)

For purposes of the Act, the bill would define various terms, including “Act”; “article”; “certified weed free”; “control”; “governing body”; “governmental agency”; “noxious weed plant material”; “person”; “political subdivision”; “secretary”; “state advisory committee”; and “weed supervisor.” The term “noxious weed” would mean any species of plant that the Secretary of Agriculture (Secretary) shall determine to be a noxious weed in rules and regulations adopted and promulgated pursuant to the Act.

Emergency Declaration of Noxious Weeds (New Section 2)

The Secretary would be authorized to make an emergency declaration of noxious weeds by order if a new, potentially harmful, verified species of plant is discovered growing in the state or the state is facing a potential influx of harmful species of plants as the result of a natural disaster.

Once the Secretary makes an emergency declaration, the Secretary would be required to consider the species of

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

plant as noxious and take every action and use any means available to control or eradicate the noxious weed. The Secretary would not be allowed to make an emergency declaration for the same species of plant more than once in a five-year period without the recommendation of the State Noxious Weed Advisory Committee.

The declaration would remain in effect for the the earlier of the following:

- 18 months;
- Until action an be taken by the Secretary to declare the species a noxious weed by rules and regulations; or
- Until the Secretary rescinds the declaration.

State Noxious Weed Advisory Committee (New Section 3)

The bill would create the State Noxious Weed Advisory Committee (Committee), which would consist of 13 voting members and the Secretary as a non-voting *ex officio* member. Members would reflect the different geographic areas of the state equally, to the greatest extent possible, and would receive no compensation for serving on the Committee, but would receive subsistence allowances, mileage, and other expenses as provided in law.

Membership

The 13 voting members would be appointed by the Secretary, as follows:

- One member, natural resource management professional, Kansas Department of Wildlife, Parks and Tourism;

- Two members, weed specialists from Kansas State University, College of Agriculture, or Kansas State Research and Extension, with one member having knowledge of non-chemical methods of weed control, appointed upon recommendation of the Dean of the College of Agriculture and the Director of Kansas State Research and Extension;
- One member, county commissioner, appointed on recommendation of the Kansas Association of Counties;
- Three members who would be private landowners;
- Two members, weed supervisors, appointed upon recommendation of the Board of Directors of the County Weed Director's Association of Kansas;
- One member, representing agricultural industries in the state, appointed upon recommendation of the Board of Directors of the Kansas Agribusiness Retailers Association;
- One member, Kansas farmer that grows non-traditional Kansas crops, which means any crop except wheat, corn, soybeans, milo, peanuts, cotton, hay, or oats;
- One member, appointed by the Kansas Biological Survey; and
- One member, appointed upon recommendation of the Board of Directors of the Kansas Cooperative Council.

Term of Office; Vacancies

The term of office for each Committee member would be four years, with initial appointments for six members for two years, four members for three years, and three members for four years, as designated by the Secretary. Committee members would be limited to serving two full terms and would hold office until expiration of the term, a successor has been duly appointed, or removal from the Committee for misconduct, incompetence, or neglect of duty. When a vacancy occurs, the recommending body of the vacating member would make a recommendation to the Secretary for a replacement, with the Secretary making the appointment as soon as reasonably possible to fill the vacancy.

Quorum; Meeting Frequency

A quorum of the Committee would be a majority of the members appointed to the Committee, which would elect or appoint a chairperson and vice-chairperson each year. The Committee would be required to meet at least quarterly.

Duties of the Committee

The Committee would be assigned with the following duties, among other duties assigned by the Secretary:

- Review the State Weed Management Plan every five years and recommend changes and updates to the Secretary;
- Recommend the designation and classification of noxious weeds in the state through the use of a risk assessment designated by the Secretary;
- Review the Act and the rules and regulations of the Secretary declaring species of plants to be noxious

weeds at least every four years and recommend changes to the Secretary;

- Review the official methods for the control and eradication for each species of plant declared a noxious weed and recommend changes to the Secretary that includes both chemical and non-chemical options for control and eradication; and
- Before January 1 of each odd-numbered year, report to the Secretary on the amount and manner of State funds spent on noxious weeds, the status of state and county noxious weed control programs, recommendations for the continued best use of state funds for noxious weed control, and recommendations on long-term noxious weed control needs.

Recommendations by the Committee could only be made by a majority vote of the members.

Unlawful Actions (New Section 4)

The bill would make it unlawful to knowingly do the following:

- Import, introduce, plant, sow, move, allow to grow, or fail to control the spread of noxious weeds;
- Sell, barter, or give away nursery stock, plants, packing materials, animal fertilizer, and soil or sod for landscaping or fertilizer use that contains noxious weeds;
- Transport articles, seed, screening, straw, hay, forage, or offal material of any kind containing noxious weed plant material or seeds unless they are contained in a way that prevents leaking or

scattering, or they are processed in an adequate way to destroy the viability of the noxious weed plant material or seeds. An exception would be made for livestock feed, if the noxious weed plant material or seeds are consumed on the same farm where grown or the noxious weed plant material or seeds are sold to commercial processors or commercial feed mixers. When the presence of noxious weed material or seeds is known, common carriers would be required to thoroughly clean and destroy any noxious weed plant material or seeds; or

- Transport into or within the state any harvesting or threshing machinery, portable feed grinders, portable seed cleaners, field ensilage cutters, or other farm vehicles or machinery that are infested with any noxious weed without first cleaning the equipment.

The bill would not apply to research sanctioned by a state or federal agency or accredited university or college; or activities specifically permitted by order of the Secretary.

Certification (New Section 5)

The bill would require any and all alfalfa, grass, hay or other forage, straw, or mulch carried onto or used within the boundaries of any lands owned or managed by the state and its agencies to be certified weed free.

Noxious Weeds Listing (Sections 6-8)

The bill would require the Secretary to adopt rules and regulations to declare species of plants as noxious weeds. The Secretary could not declare any species of plant to be a noxious weed without the recommendation of the Committee, except under emergency declaration. The bill would also

clarify existing law to reflect the Secretary's noxious weed authority proposed by the bill.

Once a species of plant has been declared a noxious weed, it would be considered a noxious weed in every county. The bill would declare it is the duty of persons to control the spread of and to eradicate all noxious weeds on the land owned or supervised by them and to use official methods for control and eradication, at such times that are approved and adopted by the Secretary.

Before adopting rules and regulations on noxious weeds, the Secretary would be required to prepare a report on the proposed changes to the official list of noxious weeds and submit the report to the Legislature.

A board of county commissioners (Board) would be authorized, with the approval of the Secretary, to publish a list of species of plants to be controlled in the county, which would be considered a noxious weed within the county boundaries. The Board would then be required to submit official methods for control and eradication of that noxious weed to the Secretary, provided no other county has submitted information for that noxious weed. If the noxious weed would later be declared a noxious weed by the Secretary, the methods for control and eradication adopted by the Secretary would control over any methods adopted by the Board. In addition, chemical materials would be available for control and eradication of the noxious weed listed by the Board, pursuant to existing law.

The current list of noxious weeds in statute would expire on December 31, 2020. In addition, the option for counties to declare the multiflora rose (*Rosa multiflora*) or bull thistle (*Cirsium vulgare*) as noxious weeds would expire on December 31, 2020. In addition, the bill would eliminate the Secretary's ability to designate any county as a *sericea lespedeza* disaster area.

Enforcement (Section 9)

The bill would vest the responsibility for enforcement of the Act, unless otherwise provided for, in the Board regarding all lands within a county's boundaries. The Board could enter into agreements with cities and townships to transfer the enforcement responsibility; however, the Board could revoke the agreement and resume the responsibility for enforcement if the city or township is unable or unwilling to fulfill the responsibilities.

County, Township, City, or District Weed Supervisor

The bill would modify the position of a county, township, city, or district weed supervisor (supervisor). The bill would require the supervisor to consult and cooperate with the Secretary regarding noxious weeds, render every possible assistance and direction for control and eradication of noxious weeds in the supervisor's jurisdiction. The salary of the supervisor would be paid out of the county noxious weed fund or, if the noxious weed program is funded primarily through county general funds, the salary would be paid from the county general funds. The bill would also mandate that if the noxious weed program is funded from more than one source, then the salary would be paid from each source in proportion to its contribution to the noxious weed program.

In addition, the supervisor would be required to make findings and submit information each year:

- No later than October 31 – annual surveys of noxious weed infestations and ascertain the approximate amount of land and highways infested with each kind of noxious weed and its location in the county;
- By March 15 – annual weed eradication progress report for the preceding calendar year, consisting of compiled data on eradicated and treated areas

and any other data deemed necessary by the Secretary, submitted to the Secretary for review; and

- By March 15 – management plan for the coming year, submitted to the Board and Secretary for review.

***Confer with Governing Bodies and Representatives
(Section 10)***

The bill would require the Secretary and supervisor to confer at times necessary and advisable with designated governing bodies and representatives regarding noxious weed infestation on their lands and eradication and control measures, and remove certain reporting requirements to the Secretary.

Costs and Funding (Sections 11-13)

The bill would authorize the tax levying body of each county, township, or incorporated city, based on the annual surveys of infestation required by law, to either make a tax levy each year for the purpose of paying the cost of control and eradication as provided in the Act or set aside a portion of the county general fund equivalent to the budget of the noxious weed program. In addition, in the case of cities and counties, a portion of the tax levy may be used to pay a portion of the principal and interest on bonds issued under existing law. The bill would also allow moneys remaining in the noxious weed eradication fund at the end of any year for which a levy is made shall either be transferred to the noxious weed capital outlay fund or remain in the noxious weed eradication fund for use in the next year.

The bill would require all records relating to funds received into and spent from both the noxious weed eradication fund and the noxious weed capital outlay fund to

be retained by the county for at least five years and shall be made available to the Secretary, upon request.

Further, the bill would require that all moneys collected would be paid into the county noxious weed eradication fund or if the noxious weed program is funded primarily through the county general fund, the moneys would be deposited into the county general fund. If the noxious weed program is funded from more than one source, then moneys would be placed into the each source in proportion to its contribution.

The bill would also require the Board to use official methods for the control and eradication of noxious weeds on lands owned or supervised by any political subdivision that has failed to control the noxious weeds after 15 days' notice to do so and a plan has not been submitted to the Board detailing how and when the noxious weed control will be carried out.

Purchase of Chemical Materials by Counties (Section 14)

The bill would allow the Board or governing body of a city to apply chemical materials purchased under current law upon highways, streets, alleys, or county-owned or -managed property.

Additionally the bill would require all moneys collected from the sale of chemical materials, and charges for use of machinery be deposited into the noxious weed eradication fund or if the noxious weed program is funded primarily through the county general fund, the moneys would be deposited into the county general fund. If the noxious weed program is funded from more than one source, then moneys would be placed into the each source in proportion to its contribution.

The bill would provide that, except as provided in continuing law, the Board would be required to sell chemical materials to landowners in its jurisdiction at a price fixed by

the Board. (Currently, the law includes additional requirements for the cost that may be recovered by the Board.)

Violations (Section 15)

The bill would make it a class C Nonperson misdemeanor with a punishment of a \$100 fine for each day up to a maximum fine of \$1,500 of non-compliance for any person, association, corporation, county, city, or other official who knowingly violates or fails to comply with any provisions of the Act, or the rules and regulations adopted pursuant to the Act.

Entrance onto Lands (Section 16)

Additionally, the bill would amend law relating to authorize personnel entering private land to inspect real and personal property in connection with administration of the state's Noxious Weed Act to stipulate that such personnel shall be able to do so without interference or obstruction, and entry upon such premises in accordance with the Act shall not be deemed a trespass.

The bill would also require any individual conducting an inspection on such premise shall do the following before entering:

- Attempt to notify, if practicable, the owner, operator, or lessee of the premises intended to be inspected; and
- Allow any present and notified owner, operator or lessees of the premises, or any representative to accompany the individual conducting the inspection.

Notification, Methods for Control and Eradication, and Funding (Sections 17-18)

The bill would amend notification requirements sent by a county weed supervisor to include official methods adopted by the Secretary for the control and eradication of the noxious weeds that the county weed supervisor found on the land. The cost of this publication would be paid from the noxious weed eradication fund or if the noxious weed program is funded primarily through the county general fund, the moneys would be deposited into the county general fund. If the noxious weed program is funded from more than one source, then moneys would be placed into the each source in proportion to its contribution.

The bill would require the county weed officer, after completion of the weed control operation notify by certified mail, the owner with an itemized statement of the cost of treatment. Funds collected would be deposited into the noxious weed eradication fund or if the noxious weed program is funded primarily through the county general fund, the moneys would be deposited into the county general fund. If the noxious weed program is funded from more than one source, then moneys would be placed into the each source in proportion except that not more than 50 percent of the cost of treating the portion of the entire contiguous tract of land as described in the legal notices provided by current law can be recorded on the tax rolls against such land in any one year.

The Board may develop a payment plan for the payment of the full amount after it has engaged in discussions with the landowner. If the landowner fails to fulfill the terms of their repayment agreement the Board may collect the remainder of the amount owed. All moneys collected through a payment plan or sale of land subject to a lien under provisions of the Act would be deposited with the county treasurer for credit to the county noxious weed eradication fund or if the noxious weed program is funded primarily through the county general fund, the moneys would be deposited into the county general fund. If the noxious weed program is funded from more than

one source, then moneys would be placed into the each source in proportion

Repeal of Existing Laws (Section 19)

In addition, to the statutes amended the bill would repeal other law governing noxious weeds and weed control programs (KSA 2-1316a, KSA 2-1325, KSA 2-1326, KSA 2-1327, KSA 2-1328, KSA 2-1329, and KSA 2-1334).

Background

The bill was introduced by the House Committee on Agriculture, at the request of a Deputy Secretary for the Kansas Department of Agriculture (KDA).

In the House Committee hearing, proponent testimony was provided by a Deputy Secretary for the KDA and representatives of the Kansas Agribusiness Retailers Association, Kansas Association of Counties (KAC), Kansas Grain and Feed Association, and Kansas Livestock Association. Written proponent testimony was submitted by the Kansas Cooperative Council. Neutral written testimony was submitted by the President of the County Weed Directors Association for Kansas. Opponent testimony was provided by representatives of the Kansas Rural Center and Kansas Sierra Club.

The House Committee made the following amendments to the bill:

- Change the composition of the Noxious Weed Advisory Committee to include the following members, and specify that a majority of the committee would constitute a quorum, and six members would be appointed for a term of two years;

- One member with knowledge of non-chemical methods of weed control;
 - One Kansas farmer that grows non-traditional Kansas crops; and
 - One member appointed by the Kansas Biological survey.
-
- Specify that recommended changes to the official methods for weed control made by the Advisory Committee included both chemical and non-chemical options;
 - Remove proposed language in the bill pertaining to the price the Board can charge for chemical materials.
 - Allow a political subdivision of a county to submit a plan to the board of county commissioner detailing how and when noxious weed control will be carried out prior to the Board carrying out official methods for the control and eradication of noxious weeds.
 - Clarify it is unlawful for any person to knowingly engage in the activities listed in the bill (subsections of new section four); and
 - Require notice be given by any individual conducting an inspection of property thought to contain noxious weeds.

The fiscal note prepared by the Division of the Budget on the bill, as introduced, states, according to the KDA, enactment would cause an increased demand for weed-free forage certification inspections. These inspections are a fee-based service provided by the KDA Plant Protection and Weed Control Program. Revenue from this program consists of charges based on additional hours of on-site and travel inspection time at \$30-per-hour and associated mileage, which is charged at \$0.535-per-mile. The KDA indicates

because the Noxious Weed Control Program is already in place and operating, the expenditures for inspections that would result should be negligible. Expenditures for four meetings of the State Noxious Weed Advisory Committee, with an average of 7 members claiming *per diem* and travel costs, are expected to amount to \$3,976 annually (\$142 *per diem* and travel costs X 4 meetings X 7 members). Expenses of the Committee would be paid from fee revenues for services provided by the KDA Plant Protection and Weed Control Program.

According to the KAC, counties would still be responsible for the control and eradication of noxious weeds, but the Committee would oversee the program. The KAC indicates it is unlikely that enactment of the bill would have a fiscal effect on Kansas counties. Any fiscal effect associated with the bill is not reflected in *The FY 2019 Governor's Budget Report*.