

Noxious Weed Act; HB 2583

HB 2583 creates the Noxious Weed Act (Act) and repeals former noxious weeds law.

Definitions

For purposes of the Act, the bill defines various terms, including “Act,” “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” means any species of plant the Secretary of Agriculture (Secretary) determines to be a noxious weed in rules and regulations adopted and promulgated pursuant to the Act.

Emergency Declaration of Noxious Weeds

The bill authorizes the Secretary 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 will be required to consider the species of plant as noxious and take every action and use any means available to control or eradicate the noxious weed. The Secretary will 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 will remain in effect for the earlier of the following:

- 18 months;
- Until action can 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

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

Membership

The following 13 voting members will be appointed by the Secretary:

- 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;
- Four members shall be private landowners involved in agricultural production, including
 - One who is a Kansas producer of traditional Kansas crops, meaning wheat, corn, soybeans, milo, peanuts, cotton, hay, or oats;
 - One who is a Kansas producer who grows non-traditional Kansas crops; and
 - One who shall be a certified organic farmer;
- 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, 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 will 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 will be limited to serving two full terms and will 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 will 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 will be a majority of the members appointed to the Committee, which will elect or appoint a chairperson and vice-chairperson each year. The Committee is required to meet at least once a year, but not more than four times per year.

Duties of the Committee

The Committee will 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 may be made only by a majority vote of the members.

Certification

The bill requires 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

The bill requires the Secretary to adopt rules and regulations to declare species of plants as noxious weeds. The Secretary cannot declare any species of plant to be a noxious weed without the recommendation of the Committee, except under emergency declaration. The bill also clarifies 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 will be considered a noxious weed in every county. The bill declares 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 will 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) will be authorized, with the approval of the Secretary, to publish a list of species of plants to be controlled in the county; any species so listed will be considered a noxious weed within the county boundaries. The Board will 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 is later declared a noxious weed by the Secretary, the methods for control and eradication adopted by the Secretary will control over any methods adopted by the Board. In addition, chemical materials will be available for control and eradication of the noxious weed listed by the Board, pursuant to continuing law. The Board will be permitted to submit additional control methods to the Secretary for approval. If the Secretary approves the additional control methods, the methods shall be added to the official control methods and be made available to all counties as a control method.

The list of noxious weeds in statute will 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 will expire on December 31, 2020. In addition, the bill eliminates the Secretary's ability to designate any county as a *sericea lespedeza* disaster area.

Enforcement

The bill will 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 can enter into agreements with cities and townships to transfer the enforcement responsibility; however, the Board can 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 will modify the position of a county, township, city, or district weed supervisor (supervisor). The bill requires the supervisor to consult and cooperate with the Secretary regarding noxious weeds and to render every possible assistance and direction for control and

eradication of noxious weeds in the supervisor's jurisdiction. In addition, the bill will continue to require the supervisor to investigate or aid in the investigation of any violation of the Act and report the results to the county attorney. The bill also adds language to require that before the supervisor applies any chemical control to public or private land, the supervisor must determine whether the lands or adjacent lands are registered on the registry or registries identified by the Secretary to provide location information about organic, sensitive, or specialty crops.

The salary of the supervisor will be paid out of the county noxious weed fund or, if the noxious weed program is funded primarily through county general funds, the salary will be paid from the county general funds. The bill also mandates that if the noxious weed program is funded from more than one source, the salary will be paid from each source in proportion to its contribution to the noxious weed program.

In addition, the supervisor is 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

The bill requires 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

The bill replaces terms such as “highways,” “roads,” “streets,” and “alleys” with “right-of-ways.”

The bill also authorizes 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 current law. The bill also allows 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 requires 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.

The bill requires all moneys collected 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 will be deposited into the county general fund. If the noxious weed program is funded from more than one source, moneys will be placed into each source in proportion to its contribution.

In addition, the bill provides, if the governing body of any political subdivision owning or supervising lands invested with noxious weeds within its jurisdiction fails to control the noxious weeds, the county will provide a 15-day notice to the political subdivision directing the submission of a plan and timeline to the Board. In instances where the Board determines the plan is unacceptable, the bill requires the Board to notify the political subdivision of requested changes to the plan and timeline. If the political subdivision fails to control the noxious weeds within 15 days or according to an accepted plan and timeline, the bill directs the Board to proceed to have official methods used for the control and eradication of the noxious weeds.

Purchase of Chemical Materials by Counties

The bill allows the Board or governing body of a city to apply chemical materials purchased under continuing law upon right-of-ways or county-owned or -managed property.

The bill requires 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 will be deposited into the county general fund. If the noxious weed program is funded from more than one source, moneys will be placed into each source in proportion to its contribution.

The bill provides, except as provided in continuing law, the Board will be required to sell chemical materials to landowners in its jurisdiction who have been assessed a tax by the county at a price fixed by the Board. Continuing law includes additional requirements for the cost that may be recovered by the Board. To clarify the role of the Board, the bill amends these requirements to clarify “them” means the “board of county commissioners” and replace “tax levy of” with “appropriated a budget equivalent to.”

In addition, the bill authorizes a Board that funds its noxious weed program from the county general fund to sell chemicals to landowners in its jurisdiction who have been assessed a tax by the county at a price fixed by the Board in an amount equal to not less than 50.0 percent and not more than 75.0 percent of the total cost incurred by the county in purchasing, storing, and handling of the chemical materials. The Board will be authorized to charge for the use of machines or other equipment and the operators to sufficiently cover the actual cost of operation. Once the tax levying body of a county, city, or township has appropriated a budget equivalent to 1.5 mills or more, the Board can collect from the landowners in its jurisdiction an

amount equal to 75.0 percent, but not more than 100.0 percent, of the total cost incurred by the county in purchasing, storing, and handling of chemical materials.

Violations

The bill makes it a class C nonperson misdemeanor with a punishment of a \$100 fine for each day up to a maximum fine of \$1,500 for non-compliance by 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

The bill amends law relating to authorized personnel entering private land to inspect real and personal property in connection with administration of the 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 also requires any individual conducting an inspection on such premise to 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

The bill amends 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 will be paid from the noxious weed eradication fund or, if the noxious weed program is funded primarily through the county general fund, the moneys will be deposited into the county general fund. If the noxious weed program is funded from more than one source, moneys will be placed into each source in proportion to its contribution.

The bill also amends a provision of law that allows a supervisor who has found musk thistle plants that have reached a stage of maturity where the official methods of control would not have satisfactory results to give legal notice requiring fall treatment to be performed. The amendment provides that this language will expire December 31, 2020.

The bill requires the county weed officer, after completion of the weed control operation, to notify by certified mail the owner with an itemized statement of the cost of treatment. Funds collected will be deposited into the noxious weed eradication fund or, if the noxious weed program is funded primarily through the county general fund, the moneys will be deposited into the county general fund. If the noxious weed program is funded from more than one source, moneys will be placed into each source in proportion, except not more than 25 percent of the

cost of treating the portion of the entire contiguous tract of land as described in the legal notices provided by continuing 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 the 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 will 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 will be deposited into the county general fund. If the noxious weed program is funded from more than one source, moneys will be placed into each source in proportion.

Repeal of Additional Laws

In addition to the statutes amended, the bill repeals other law governing noxious weeds and weed control programs (KSA 2-1316a and KSA 2-1334).