

HOUSE BILL NO. 142

INTRODUCED BY J. KASSMIER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING COUNTY WEED LAWS; DEFINING "INTEGRATED WEED MANAGEMENT PROGRAM"; REVISING THE DEFINITION OF "WEED MANAGEMENT" OR "CONTROL"; REVISING REFERENCES TO PESTICIDES AND CHEMICALS; AND AMENDING SECTIONS 7-22-2101, 7-22-2109, 7-22-2121, 7-22-2142, 80-5-120, 80-7-105, 80-7-801, AND 80-7-903, MCA."

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

Section 1. Section 7-22-2101, MCA, is amended to read:

"7-22-2101. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board" means a district weed board created under 7-22-2103.

(2) "Commissioners" means the board of county commissioners.

(3) "Coordinator" means the person employed by the county to conduct the district noxious weed management program and supervise other district employees.

(4) "Department" means the department of agriculture provided for in 2-15-3001.

(5) "District" means a weed management district organized under 7-22-2102.

(6) "Integrated weed management program" means a program designed for the long-term management and control of weeds using a combination of techniques, including hand-pulling, cultivation, use of herbicide, use of biological control, mechanical treatment, prescribed grazing, prescribed burning, education, prevention, and revegetation.

~~(6)~~(7) "Native plant" means a plant indigenous to the state of Montana.

~~(7)~~(8) "Native plant community" means an assemblage of native plants occurring in a natural habitat.

~~(8)~~(9) (a) "Noxious weeds" or "weeds" means any exotic plant species established or that may be introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated:

(i) as a statewide noxious weed by rule of the department; or

(ii) as a district noxious weed by a board, following public notice of intent and a public hearing.

1 (b) A weed designated by rule of the department as a statewide noxious weed must be considered
2 noxious in every district of the state.

3 ~~(9)(10)~~ "Person" means an individual, partnership, corporation, association, or state or local government
4 agency or subdivision owning, occupying, or controlling any land, easement, or right-of-way, including any county,
5 state, or federally owned and controlled highway, drainage or irrigation ditch, spoil bank, barrow pit, or
6 right-of-way for a canal or lateral.

7 ~~(10)(11)~~ "Weed management" or "control" means the ~~planning and implementation of a coordinated~~
8 ~~program for the containment, suppression, and, where possible, eradication of noxious weeds~~ use of an
9 integrated weed management program for the enforcement, containment, suppression, and, where possible,
10 eradication of noxious weeds."

11

12 **Section 2.** Section 7-22-2109, MCA, is amended to read:

13 **"7-22-2109. Powers and duties of board.** (1) In addition to any powers or duties established in the
14 resolution creating a district weed board, the board may:

15 (a) supervise a coordinator and other employees and provide for their compensation;

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

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

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

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

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

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

29 (h) perform other activities relating to weed management.

30 (2) The board shall:

- 1 (a) administer the district's noxious weed management program;
 2 (b) establish management criteria for noxious weeds on all land within the district; and
 3 (c) make all reasonable efforts to develop and implement a noxious weed management program
 4 covering all land within the district owned or administered by a federal agency."

5
 6 **Section 3.** Section 7-22-2121, MCA, is amended to read:

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

9 (2) The noxious weed management plan must:

- 10 (a) specify the goals and priorities of the program;
 11 (b) review the distribution and abundance of each noxious weed species known to occur within the
 12 district and specify the locations of new infestations and areas particularly susceptible to new infestations;
 13 (c) specify ~~pesticide~~ herbicide management goals and procedures, including but not limited to water
 14 quality protection, public and worker safety, equipment selection and maintenance, and ~~pesticide~~ herbicide
 15 selection, application, mixing, loading, storage, and disposal; and
 16 (d) estimate the personnel, operations, and equipment costs of the proposed program;
 17 (e) develop a compliance plan or strategy; and
 18 (f) incorporate cooperative agreements established pursuant to 7-22-2151.

19 (3) The board shall provide for the management of noxious weeds on all land or rights-of-way owned
 20 or controlled by a county or municipality within the district. It shall take particular precautions while managing the
 21 noxious weeds to preserve beneficial vegetation and wildlife habitat. When possible, management must include
 22 cultural, ~~chemical~~ herbicidal, and biological methods.

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

25
 26 **Section 4.** Section 7-22-2142, MCA, is amended to read:

27 **"7-22-2142. Sources of money for noxious weed fund.** (1) The commissioners may provide sufficient
 28 money in the noxious weed fund for the board to fulfill its duties, as specified in 7-22-2109, by:

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

1 (b) subject to 15-10-420 and at any time fixed by law for levy and assessment of taxes, levying a tax of
 2 not less than 1.6 mills on the taxable value of all taxable property in the county. The tax levied under this
 3 subsection must be identified on the assessment as the tax that will be used for noxious weed control.

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

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

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

11 (5) Subject to 15-10-420, the commissioners may impose a tax for weed control within a special
 12 management zone as provided in 7-22-2121(4). For the purposes of imposing the tax, the special management
 13 zone boundaries must be established by the board and approved by a majority of the voters within the special
 14 management zone. Pursuant to an election held in accordance with 15-10-425, the amount of the tax must be
 15 approved by a majority of the voters within the special management zone, and approval of the zone and the tax
 16 may occur simultaneously. Revenue received from a special management zone tax must be spent on weed
 17 management projects within the boundaries of the special management zone."
 18

19 **Section 5.** Section 80-5-120, MCA, is amended to read:

20 **"80-5-120. Definitions.** As used in this chapter, unless the context requires otherwise, the following
 21 definitions apply:

22 (1) "Advertisement" means a representation, other than a representation on the label, that is
 23 disseminated by any means and that relates to seed governed by the provisions of this chapter.

24 (2) (a) "Agricultural seeds" means the seeds of grass, forage, cereal, fiber crops, and any other kinds
 25 of seeds commonly recognized within this state as agricultural seeds. The term includes lawn seeds and mixtures
 26 of seeds.

27 (b) The term does not include seeds from plants of the genus Cannabis that contain more than 0.3%
 28 tetrahydrocannabinol.

29 (3) "Approximate percentage" and "approximate number" mean the percentage or number with the
 30 variations above and below that value as allowed according to the tolerance limits defined in the rules for seed

1 testing adopted by the association of official seed analysts.

2 (4) "Bulk" means not packaged in separate units.

3 (5) "Certifying agency" means:

4 (a) an agency authorized under the laws of a state, territory, or possession of the United States to
5 officially certify seed and that has standards and procedures to ensure the genetic purity and identity of the seed
6 certified; or

7 (b) an agency of a foreign country determined by the department to adhere to procedures and standards
8 for seed certification that are comparable to those adhered to generally by the seed certifying agencies described
9 in subsection (5)(a).

10 (6) "Conditioning" means drying, cleaning, scarifying, and other operations that could change the purity
11 or germination of a seed and require the seed lot to be retested to determine labeling.

12 (7) "Controlling the pollination" means to use a method of hybridization that will produce pure seed that
13 is at least 75% hybrid seed.

14 (8) "Dormant" means viable seeds, excluding hard seeds, that fail to germinate when provided the
15 specified germination conditions for the seed in question.

16 (9) "Flower seeds" means seeds of herbaceous plants grown for their blooms, ornamental foliage, or
17 other ornamental parts and that are commonly known and sold under the name of flower seeds in this state.

18 (10) "Genuine grower declaration" means a statement signed by the grower that indicates, for each lot
19 of seed, the lot number, kind, variety, origin, weight, year of production, date, and destination of shipment.

20 (11) "Germination" means the emergence and development from the seed embryo as evidence of vitality
21 when the seeds are subjected to the proper moisture and temperature conditions with proper aeration for the
22 customary length of time for each specific kind of seed, as specified in the rules for seed testing adopted by the
23 association of official seed analysts.

24 (12) "Hard seeds" means seeds that remain hard at the end of the prescribed test period because they
25 have not absorbed water because of an impermeable seed coat.

26 (13) "Hybrid", as the term applies to varieties of seed, means the first generation seed of a cross
27 produced by controlling the pollination and by combining:

28 (a) two or more inbred lines;

29 (b) one inbred or a single cross with an open pollinated variety; or

30 (c) two or more selected clones, seed lines, varieties, or species except open-pollinated varieties of corn

1 (Zea mays). The second generation of subsequent generations from those crosses may not be regarded as
2 hybrids. Hybrid designations must be treated as variety names.

3 (14) "Indigenous seeds" means the seeds of those plants that are naturally adapted to an area where
4 the intended use is for revegetation of disturbed sites. These plants include grasses, forbs, shrubs, and legumes.

5 (15) "Inert matter" means all matter that is not seed, including broken seeds, sterile florets, chaff, fungus
6 bodies, and stones as determined by methods defined by the association of official seed analysts.

7 (16) "Kind" means one or more related species or subspecies that are known singly or collectively by one
8 common name, such as corn, oats, alfalfa, and timothy.

9 (17) "Labeling" means a tag or other device, attached to or written, stamped, or printed on a container
10 or accompanying a lot of bulk seeds, that purports to set forth the information required on the seed label under
11 80-5-123 and that may include any other information relating to the labeled seed.

12 (18) "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion of
13 which is uniform within recognized tolerances for the factors that appear in the labeling.

14 (19) "Mixture" means seed consisting of more than one kind, each in excess of 5% by weight of the
15 whole.

16 (20) "Montana certified seed grower" means a member of an authorized Montana seed certifying agency
17 who has consented to produce seed under the rules for certified classes of seed, with respect to the maintenance
18 of genetic purity and variety identity, set forth by the establishing agency.

19 (21) "Other crop seeds" means any agricultural, vegetable, or flower seeds other than the kind or variety
20 of seed or the mixture of seeds included as pure seed.

21 (22) "Person" means an individual, firm, partnership, corporation, or association.

22 (23) "Prohibited noxious weed seeds" means the seeds of plant species that are designated as noxious
23 weeds as defined in 7-22-2101~~(b)~~~~(a)~~~~(i)~~.

24 (24) "Protected variety" means a variety for which a certificate has been issued by the United States plant
25 variety protection office or for which an application for protection has been filed granting the owner or the owner's
26 authorized agent exclusive rights in the sale and distribution of the variety.

27 (25) "Pure live seed" means the product of the percentage of germination plus hard seed or dormant seed
28 multiplied by the percentage of pure seed, divided by 100, with the result expressed as a whole number.

29 (26) "Pure seed" means seed exclusive of inert matter and all other seeds not of the seed being
30 considered, as determined by methods defined by the association of official seed analysts.

1 (27) "Restricted weed seeds" means the seeds of any plant that may adversely affect agriculture or the
2 environment and that are designated as restricted weed seeds under rules adopted by the department.

3 (28) "Screening" means chaff, sterile florets, immature seed, weed seed, inert matter, and any other
4 materials removed from seed by any kind of cleaning or conditioning.

5 (29) "Seed conditioning plant" means a place of business, whether a permanent or portable facility, that
6 conditions seeds.

7 (30) "Seed dealer" means a person who sells seeds.

8 (31) "Seed labeler" means a person affixing labels to seeds, with that person's name, address, and other
9 information as required in 80-5-123.

10 (32) "Sell" means to offer for sale, expose for sale, have in possession for sale, exchange, barter, or
11 trade. The term includes furnishing agricultural seed to growers for the production of a crop on contract.

12 (33) "Stop sale" means an administrative order provided by law that restrains the sale, use, disposition,
13 and movement of a definite amount of seed.

14 (34) "Treated" means that seed has received an application of a substance or has been subjected to a
15 process for which a claim is made.

16 (35) "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly
17 differentiated except under special conditions.

18 (36) "Variety" means a subdivision of a kind that is:

19 (a) distinct, in the sense that the variety can be differentiated by one or more identifiable morphological,
20 physiological, or other characteristics from all other varieties known publicly;

21 (b) uniform, in the sense that the variations in essential and distinctive characteristics are describable;
22 and

23 (c) stable, in the sense that the variety will remain unchanged in its essential and distinctive
24 characteristics and its uniformity when reproduced or reconstituted as required by the different categories of
25 varieties.

26 (37) "Vegetable seeds" means seeds of those crops that are or may be grown in gardens or on truck
27 farms and are or may be sold generally under the name of vegetable seeds or herbs.

28 (38) "Viable" means that seeds are capable of producing a normal seedling under optimum growing
29 conditions after all forms of dormancy have been overcome, if present.

30 (39) "Weed seeds" means the seeds of all plants generally recognized as weeds within this state and

1 includes noxious weed seeds."

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3 **Section 6.** Section 80-7-105, MCA, is amended to read:

4 **"80-7-105. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
5 apply:

6 (1) "Firm" means an individual, company, partnership, association, or corporation.

7 (2) "Landscape service" means a firm that buys, sells, or resells nursery stock.

8 (3) "Nursery" means the business or location where nursery stock is grown, offered for sale, or
9 distributed.

10 (4) "Nursery stock" means botanically classified plants or parts of plants, including but not limited to
11 tropical potted plants, aquatic plants, and turf or sod grass. Certain plants and plant materials intended for human
12 or animal consumption and not intended for planting may not be considered nursery stock, including the following:

13 (a) commodity plants and their seeds;

14 (b) pasture grasses;

15 (c) cut plants not for propagation;

16 (d) fruits or vegetables for human or animal consumption;

17 (e) cut trees and products that are going to be processed to a point that they no longer represent a pest
18 risk; and

19 (f) plant debris for disposal or processing.

20 (5) "Plant dealer" means a firm that buys plants or plant products from a producer for the purpose of
21 offering the plants or plant products for sale or resale or as part of a landscape service.

22 (6) "Plant inspection certificate" means a document issued by the department or the plant pest regulatory
23 agency of another state that declares that the nursery stock, plants, or plant material grown by the firm named
24 on the certificate is apparently free of injurious plant pests.

25 (7) "Plant pest" means an insect, weed, fungus, virus, bacteria, or other organism that can directly or
26 indirectly injure or cause damage in a plant or a product of a plant and that meets the criteria as a pest
27 established by department rule. For purposes of this chapter, noxious weeds, as defined in 7-22-2101(8)(a)(i),
28 or other exotic weeds are defined as plant pests."

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30 **Section 7.** Section 80-7-801, MCA, is amended to read:

