

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 731

Introduced by Utter, 33.

Read first time January 06, 2010

Committee: Agriculture

A BILL

1 FOR AN ACT relating to the Noxious Weed Control Act; to
2 amend sections 2-954, 2-955, and 2-959, Reissue Revised
3 Statutes of Nebraska; to change provisions relating to
4 noxious weed control funds; and to repeal the original
5 sections.

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

1 Section 1. Section 2-954, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 2-954 (1) (a) The duty of enforcing and carrying out the
4 Noxious Weed Control Act shall be vested in the director and
5 the control authorities as designated in the act. The director
6 shall determine what weeds are noxious for purposes of the act.
7 A list of such noxious weeds shall be included in the rules and
8 regulations adopted and promulgated by the director. The director
9 shall prepare, publish, and revise as necessary a list of noxious
10 weeds. The list shall be distributed to the public by the director,
11 the Cooperative Extension Service, the control authorities, and any
12 other body the director deems appropriate. The director shall, from
13 time to time, adopt and promulgate rules and regulations on methods
14 for control of noxious weeds and adopt and promulgate such rules
15 and regulations as are necessary to carry out the act. Whenever
16 special weed control problems exist in a county involving weeds not
17 included in the rules and regulations, the control authority may
18 petition the director to bring such weeds under the county control
19 program. The petition shall contain the approval of the county
20 board. Prior to petitioning the director, the control authority,
21 in cooperation with the county board, shall hold a public hearing
22 and take testimony upon the petition. Such hearing and the notice
23 thereof shall be in the manner prescribed by the Administrative
24 Procedure Act. A copy of the transcript of the public hearing shall
25 accompany the petition filed with the director. The director may

1 approve or disapprove the request. If approval is granted, the
2 control authority may proceed under the forced control provisions
3 of sections 2-953 to 2-955 and 2-958.

4 (b) The director shall (i) investigate the subject of
5 noxious weeds, (ii) require information and reports from any
6 control authority as to the presence of noxious weeds and other
7 information relative to noxious weeds and the control thereof in
8 localities where such control authority has jurisdiction, (iii)
9 cooperate with control authorities in carrying out other laws
10 administered by him or her, (iv) cooperate with agencies of federal
11 and state governments and other persons in carrying out his or her
12 duties under the Noxious Weed Control Act, (v) with the consent
13 of the Governor, conduct investigations outside this state to
14 protect the interest of the agricultural industry of this state
15 from noxious weeds not generally distributed therein, (vi) with the
16 consent of the federal agency involved, control noxious weeds on
17 federal lands within this state, with reimbursement, when deemed
18 by the director to be necessary to an effective weed control
19 program, (vii) advise and confer as to the extent of noxious weed
20 infestations and the methods determined best suited to the control
21 thereof, (viii) call and attend meetings and conferences dealing
22 with the subject of noxious weeds, (ix) disseminate information and
23 conduct educational campaigns with respect to control of noxious
24 weeds, (x) procure materials and equipment and employ personnel
25 necessary to carry out the director's duties and responsibilities,

1 and (xi) perform such other acts as may be necessary or appropriate
2 to the administration of the act.

3 (c) The director may (i) temporarily designate a weed
4 as a noxious weed for up to eighteen months if the director,
5 in consultation with the advisory committee created under section
6 2-965.01, has adopted criteria for making temporary designations
7 and (ii) apply for and accept any gift, grant, contract, or other
8 funds or grants-in-aid from the federal government or other public
9 and private sources for noxious weed control purposes and account
10 for such funds as prescribed by the Auditor of Public Accounts.

11 (d) When the director determines that a control
12 authority has substantively failed to carry out its duties and
13 responsibilities as a control authority or has substantively failed
14 to implement a county weed control program, he or she shall
15 instruct the control authority regarding the measures necessary
16 to fulfill such duties and responsibilities. The director shall
17 establish a reasonable date by which the control authority shall
18 fulfill such duties and responsibilities. If the control authority
19 fails or refuses to comply with instructions by such date, the
20 Attorney General shall file an action as provided by law against
21 the control authority for such failure or refusal.

22 (2) (a) Each control authority shall carry out the duties
23 and responsibilities vested in it under the act with respect
24 to land under its jurisdiction in accordance with rules and
25 regulations adopted and promulgated by the director. Such duties

1 shall include the establishment of a coordinated program for
2 control of noxious weeds within the county.

3 (b) A control authority may cooperate with any person in
4 carrying out its duties and responsibilities under the act.

5 (3) (a) Each county board shall employ one or more weed
6 control superintendents. Each such superintendent shall, as a
7 condition precedent to employment, be certified in writing by the
8 federal Environmental Protection Agency as a commercial applicator
9 under the Federal Insecticide, Fungicide, and Rodenticide Act.
10 Each superintendent shall be bonded for such sum as the county
11 board shall prescribe. The same person may be a weed control
12 superintendent for more than one county. Such employment may be for
13 such tenure and at such rates of compensation and reimbursement
14 for travel expenses as the county board may prescribe. Such
15 superintendent shall be reimbursed for mileage at a rate equal to
16 or greater than the rate provided in section 81-1176.

17 (b) Under the direction of the control authority, it
18 shall be the duty of every weed control superintendent to examine
19 all land under the jurisdiction of the control authority for the
20 purpose of determining whether the Noxious Weed Control Act and
21 the rules and regulations adopted and promulgated by the director
22 have been complied with. The weed control superintendent shall:
23 (i) Compile such data on infested areas and controlled areas
24 and such other reports as the director or the control authority
25 may require; (ii) consult and advise upon matters pertaining to

1 the best and most practical methods of noxious weed control and
2 render assistance and direction for the most effective control;
3 (iii) investigate or aid in the investigation and prosecution of
4 any violation of the act; and (iv) perform such other duties as
5 required by the control authority in the performance of its duties.
6 Weed control superintendents shall cooperate and assist one another
7 to the extent practicable and shall supervise the carrying out of
8 the coordinated control program within the county.

9 (c) In cases involving counties in which municipalities
10 have ordinances for weed control, the control authority may enter
11 into agreements with municipal authorities for the enforcement
12 of local weed ordinances and may follow collection procedures
13 established by such ordinances. All money received shall be
14 deposited in the noxious weed control authority fund or, if no
15 noxious weed control fund exists, in the county general fund.

16 Sec. 2. Section 2-955, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 2-955 (1) Notices for control of noxious weeds shall
19 consist of two kinds: General notices, as prescribed by rules and
20 regulations adopted and promulgated by the director, which notices
21 shall be on a form prescribed by the director; and individual
22 notices, which notices shall be on a form prescribed by this
23 section. Failure to publish general weed notices or to serve
24 individual notices as provided in this section shall not relieve
25 any person from the necessity of full compliance with the Noxious

1 Weed Control Act and rules and regulations adopted and promulgated
2 pursuant to the act.

3 (a) General notice shall be published by each control
4 authority, in one or more newspapers of general circulation
5 throughout the area over which the control authority has
6 jurisdiction, on or before May 1 of each year and at such other
7 times as the director may require or the control authority may
8 determine.

9 (b) Whenever any control authority finds it necessary to
10 secure more prompt or definite control of weeds on particular land
11 than is accomplished by the general published notice, it shall
12 cause to be served individual notice upon the owner of record
13 of such land at his or her last-known address, giving specific
14 instructions and methods when and how certain named weeds are to be
15 controlled. Such methods may include definite systems of tillage,
16 cropping, management, and use of livestock.

17 Each control authority shall use one or both of the
18 following forms for all individual notices: (i)

19 County Weed Control Authority

20 OFFICIAL NOTICE

21 Section 2-952, Reissue Revised Statutes of Nebraska,
22 places an affirmative duty upon every person to control
23 noxious weeds on land under such person's ownership or control.
24 Information received by the control authority, including an
25 onsite investigation by the county weed control superintendent

1 or a deputy, indicated the existence of an uncontrolled
2 noxious weed infestation on property owned by you at:
3

4 The noxious weed or weeds are The method
5 of control recommended by the control authority is as follows:
6

7 Other appropriate control methods are acceptable if
8 approved by the county weed control superintendent.

9 Because the stage of growth of the noxious weed
10 infestation on the above-specified property warrants immediate
11 control, if such infestation remains uncontrolled after ten days
12 from the date specified at the bottom of this notice, the control
13 authority may enter upon such property for the purpose of taking
14 the appropriate weed control measures. Costs for the control
15 activities of the control authority shall be at the expense of the
16 owner of the property and shall become a lien on the property as a
17 special assessment levied on the date of control.

18 Weed Control Superintendent

19 Dated.....;

20 or (ii)

21 County Weed Control Authority

22 OFFICIAL NOTICE

23 Section 2-952, Reissue Revised Statutes of Nebraska,
24 places an affirmative duty upon every person to control
25 noxious weeds on land under such person's ownership or control.

1 Information received by the control authority, including an
 2 onsite investigation by the county weed control superintendent
 3 or a deputy, indicates the existence of an uncontrolled
 4 noxious weed infestation on property owned by you at:
 5

6 The noxious weed or weeds are The
 7 method of control recommended by the control authority is as
 8 follows:

9 Other appropriate control methods are acceptable if
 10 approved by the county weed control superintendent. If, within
 11 fifteen days from the date specified at the bottom of this notice,
 12 the noxious weed infestation on such property, as specified above,
 13 has not been brought under control, you may, upon conviction, be
 14 subject to a fine of \$100.00 per day for each day of noncompliance
 15 beginning on, up to a maximum of fifteen days of
 16 noncompliance (maximum \$1,500).

17 Upon request to the control authority, within fifteen
 18 days from the date specified at the bottom of this notice, you are
 19 entitled to a hearing before the control authority to challenge the
 20 existence of a noxious weed infestation on property owned by you at
 21

22 Weed Control Superintendent

23 Dated.....

24 In all counties having a population of three hundred
 25 thousand or more inhabitants, the control authority may dispense

1 with the individual notices and may publish general notices
2 if published in one or more newspapers of general circulation
3 throughout the area over which such control authority has
4 jurisdiction. Such notice shall be published weekly for four
5 successive weeks prior to May 1 of each year or at such other
6 times as the control authority deems necessary. In no event shall a
7 fine be assessed against a landowner as prescribed in subdivision
8 (3) (a) of this section unless the control authority has caused
9 individual notice to be served upon the landowner as specified in
10 this subdivision.

11 (2) At the request of any owner served with an individual
12 notice pursuant to subdivision (1) (b) (ii) of this section, the
13 control authority shall hold an informal public hearing to allow
14 such landowner an opportunity to be heard on the question of
15 the existence of an uncontrolled noxious weed infestation on such
16 landowner's property.

17 (3) Whenever the owner of the land on which noxious weeds
18 are present has neglected or failed to control them as required
19 pursuant to the act and any notice given pursuant to subsection (1)
20 of this section, the control authority having jurisdiction shall
21 proceed as follows:

22 (a) If, within fifteen days from the date specified on
23 the notice required by subdivision (1) (b) (ii) of this section,
24 the owner has not taken action to control the noxious weeds on
25 the specified property and has not requested a hearing pursuant

1 to subsection (2) of this section, the control authority shall
2 notify the county attorney who shall proceed against such owner as
3 prescribed in this subdivision. A person who is responsible for an
4 infestation of noxious weeds on particular land under his or her
5 ownership and who refuses or fails to control the weeds on the
6 infested area within the time designated in the notice delivered
7 by the control authority shall, upon conviction, be guilty of an
8 infraction pursuant to sections 29-431 to 29-438, except that the
9 penalty shall be a fine of one hundred dollars per day for each day
10 of violation up to a total of one thousand five hundred dollars for
11 fifteen days of noncompliance; or

12 (b) If, within ten days from the date specified in the
13 notice required by subdivision (1)(b)(i) of this section, the
14 owner has not taken action to control the noxious weeds on the
15 specified property and the stage of growth of such noxious weeds
16 warrants immediate control to prevent spread of the infestation
17 to neighboring property, the control authority may cause proper
18 control methods to be used on such infested land, including
19 necessary destruction of growing crops, and shall advise the record
20 owner of the cost incurred in connection with such operation. The
21 cost of any such control shall be at the expense of the owner. In
22 addition the control authority shall immediately cause notice to
23 be filed of possible unpaid weed control assessments against the
24 property upon which the control measures were used in the register
25 of deeds office in the county where the property is located. If

1 unpaid for two months, the control authority shall certify to the
2 county treasurer the amount of such expense and such expense shall
3 become a lien on the property upon which the control measures were
4 taken as a special assessment levied on the date of control. The
5 county treasurer shall add such expense to and it shall become and
6 form a part of the taxes upon such land and shall bear interest at
7 the same rate as taxes.

8 Nothing contained in this section shall be construed
9 to limit satisfaction of the obligation imposed hereby in whole
10 or in part by tax foreclosure proceedings. The expense may be
11 collected by suit instituted for that purpose as a debt due the
12 county or by any other or additional remedy otherwise available.
13 Amounts collected under subdivision (3) (b) of this section shall be
14 deposited to the noxious weed control fund of the control authority
15 or, if no noxious weed control fund exists, to the county general
16 fund.

17 Sec. 3. Section 2-959, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 2-959 Control authorities, independently or in
20 combination, may purchase or provide for needed or necessary
21 equipment for the control of weeds, whether or not declared
22 noxious, on land under their jurisdiction and may make available
23 the use of machinery and other equipment and operators at such cost
24 as may be deemed sufficient to cover the actual cost of operations,
25 including depreciation, of such machinery and equipment. All funds

1 so received shall be deposited to the noxious weed control fund or,
2 if no noxious weed control fund exists, to the county general fund.

3 Each control authority shall keep a record showing the procurement
4 and rental of equipment, which record shall be open to inspection
5 by citizens of this state.

6 Sec. 4. Original sections 2-954, 2-955, and 2-959,
7 Reissue Revised Statutes of Nebraska, are repealed.