

## LEGISLATIVE BILL 1

Approved by the Governor February 2, 1987

Introduced by Marsh, 29, Vice-Chairperson, Exec. Board

AN ACT relating to agriculture; to amend sections 2-953, 2-954, 2-955, 2-958, 2-961, 2-962, 2-963, 2-964, 2-966, 2-2303, 2-2310, 2-2311, 2-2317, and 2-2318, Reissue Revised Statutes of Nebraska, 1943, and section 2-1221, Revised Statutes Supplement, 1986; to repeal obsolete statutes relating to an annual report of the State Board of Agriculture, a transfer of funds, racetrack messenger services, a transfer to the Nebraska Wheat Development, Utilization, and Marketing Board, a transfer to the Director of Economic Development, a transfer to the Department of Economic Development, formation of natural resources districts, and the existence of watershed advisory groups; to harmonize provisions; and to repeal the original sections, and also sections 2-104, 2-105, 2-965, 2-2320, 2-2504.01, 2-2507, 2-3205, and 2-3258, Reissue Revised Statutes of Nebraska, 1943, and section 2-1221.01, Revised Statutes Supplement, 1986.

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

Section 1. That section 2-953, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-953. As used in sections 2-952 to 2-965 2-964, unless the context otherwise requires:

(1) Person shall mean any individual, partnership, firm, corporation, company, society, association, the state or any department, agency, or subdivision thereof, or any other entity;

(2) Control, controlled, or controlling, shall include being in charge of or being in possession, whether as owner, lessee, renter, tenant, under statutory authority, or otherwise;

(3) Noxious weeds shall mean and include any weed designated and listed in rules and regulations adopted and promulgated by the Director of Agriculture as noxious;

(4) Control authority shall mean the county

weed district board, which shall represent all rural area and cities, villages, and townships within the county boundaries. The county board of commissioners or supervisors may, following an election in which a majority of the votes cast are in favor of such action, function as and exercise the authority and carry out the duties of the county weed district board. To initiate such an election, the county board of commissioners or supervisors may, by resolution, require the county clerk of such county to have placed upon the ballot at the election next following such resolution, the question, Shall the weed control authority board be dissolved and its duties and authority be exercised by the county board?

Yes .... No ....

If a majority of the votes cast on this question are opposed to dissolution of the weed control authority board, the county shall remain subject to the direction and authority of the elected weed control authority board. If a majority of the votes cast on this question are in favor of the dissolution of the weed control authority board, the county board shall function as and exercise the authority and carry out the duties of the county weed district board. If, at any time following the dissolution of the county weed control authority board, county residents, representing at least ten per cent of the votes cast in the preceding general election in such county, submit a petition to the county clerk for reestablishment of the county weed control authority board as an independent elected body, the clerk shall place the following question on the next general election ballot: Shall the weed control authority board be reestablished and elected independent of other county officials?

Yes .... No ....

If a majority of the ballots favor reestablishment of the independent board, the county board shall appoint an initial weed control authority board and thereafter the weed control authority board members shall be elected in conformity with this section.

When the county board of commissioners or supervisors does not function as the weed district board, such board shall be composed of five members, three of whom shall be from rural areas and two of whom shall be from cities, villages, or townships. The county board shall appoint members of the authority to fill any vacancy occurring on the board. The two members from cities, villages, or townships shall

thereafter be elected at the general election in 1966 and each four years thereafter, and the three members from rural areas shall be elected at the general election in 1968 and each four years thereafter. Persons seeking election to the authority shall be nominated and elected regardless of political affiliation. They shall file in the same manner as is provided by law for county superintendents and shall not be required to pay a filing fee. The members of the board shall be paid a per diem of not less than twelve dollars for each day actually and necessarily engaged in the performance of their official duties as members of such board and shall be allowed mileage reimbursement on the same basis as provided in section 23-1112 for county officers and employees. In addition to the five-member board, the chairperson of the county board of supervisors or commissioners may appoint one member of the county board to serve as ex officio member of the weed control authority board to provide coordination between such boards. ~~The~~ **PROVIDED**; ~~that the county board member or commissioner so appointed shall not be entitled to expense reimbursement allowed weed district board members. The ex officio member shall possess the same authority as other members, including the right to vote;~~

(5) Applicable fund shall mean the fund current at the time the work is performed or the money is received; and

(6) Director shall mean the Director of Agriculture; or his or her designated representative.

Sec. 2. That section 2-954, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-954. (1)(a) The duty of enforcing sections 2-952 to ~~2-964~~ 2-965 and carrying out their provisions is vested in the director and the authorities designated in sections 2-952 to 2-965 ~~2-964~~ acting under the supervision and direction of the director. The director shall determine what weeds are noxious for the purposes of sections 2-952 to 2-965; ~~2-964~~ and shall compile and keep current a list of such noxious weeds, which list shall be published and incorporated in the rules and regulations of the director. The director shall, from time to time, adopt and publish methods as official for control of noxious weeds and make and publish such rules and regulations as in his or her judgment are necessary to carry out ~~the provisions of~~ sections 2-952 to 2-965 ~~2-964~~. Whenever special weed control problems exist in a county involving weeds not covered in the noxious weed

list, the weed control authority may petition the director to bring such weeds under the county control program. The petition shall contain the approval of the county board of supervisors or commissioners. Prior to petitioning the director, the control authority, in cooperation with the county board of commissioners or supervisors, shall hold a public hearing and take testimony upon the petition. Such hearing and the notice thereof shall be in the manner prescribed by Chapter 84, article 9. A copy of the transcript of the public hearing shall accompany the petition filed with the director. The director may approve or disapprove the request and if approval is granted, the weed control authority may proceed under the forced control provisions of sections 2-953 to 2-955 and 2-958.

(b) The director shall investigate the subject of noxious weeds; require information and reports from any control authority as to the presence of noxious weeds and other information relative to noxious weeds and the control thereof in localities where such control authority has jurisdiction; cooperate with control authorities in carrying out other acts administered by him or her; cooperate with agencies of federal and state governments and persons, in carrying out his or her duties under sections 2-952 to ~~2-965~~ 2-964; and, with the consent of the Governor, in the conduct of investigations outside this state in the interest of the protection of the agricultural industry of this state from noxious weeds not generally distributed therein; with the consent of the federal agency involved, control noxious weeds on federal lands within this state, with or without reimbursement, when deemed by him or her to be necessary to an effective weed control program; advise and confer as to the extent of noxious weed infestations and the methods determined best suited to the control thereof; call and attend meetings and conferences dealing with the subject of noxious weeds; disseminate information and conduct educational campaigns with respect to control of noxious weeds; procure materials and equipment and employ personnel necessary to carry out his or her duties and responsibilities; and perform such other acts as may be necessary or appropriate to the administration of sections 2-952 to ~~2-965~~ 2-964.

(c) When it is determined by the director that a control authority has failed to carry out any of its duties and responsibilities as a control authority, the director shall perform such duties and responsibilities in the same manner and under the same conditions except

that any money collected as provided in subsections (2) and (3) of section 2-955 and the control authority's share of costs under subsection (4) of section 2-955 shall be for deposit to the applicable fund of the director.

(d) When determined by the director that a control authority has failed to control noxious weeds on land owned or controlled by it or to comply with the provisions of section 2-956 as to any article owned or controlled by it, the director shall have proper control measures taken and may hold or prevent the movement of any such article, and the cost of such control work shall be a charge against the owner of the land upon which the cost for control was incurred and may be recovered by suit instituted for that purpose in the name of the director by the Attorney General. The administrative costs incurred by the director in the administration of a control program upon the default of the weed control authority of a county may be recovered from the county. All funds thus collected shall be deposited to the applicable fund of the director.

(2)(a) Each control authority shall carry out the duties and responsibilities vested in it under sections 2-952 to ~~2-965~~ ~~2-964~~ with respect to land under its jurisdiction, in accordance with rules and regulations prescribed by the director. Such duties shall include the establishment, under the general direction of the county control authority, of a coordinated program for control of noxious weeds within such county.

(b) A control authority may cooperate with any person in carrying out its duties and responsibilities under sections 2-952 to ~~2-965~~, ~~2-964~~ and may cooperate with the director in carrying out other acts administered by him or her.

(3)(a) Each county board of supervisors or commissioners shall, ~~within thirty days following August 24, 1975, and continually thereafter,~~ employ one or more weed control superintendents. Such superintendents shall, as a condition precedent to employment and at least annually thereafter, be certified in writing by the director to be qualified to detect and treat noxious weeds. Each superintendent shall be bonded for such sum as the county board shall prescribe. The same person may be a weed control superintendent for more than one county. Such employment may be for such tenure, and at such rates of compensation and reimbursement for travel expenses, as the county board may prescribe. Such superintendent shall be reimbursed for mileage at a rate

equal to or greater than the rate provided in section 23-1112 for county officers and employees.

(b) Under the direction of the employing control authority, it shall be the duty of every weed control superintendent to examine all land under the jurisdiction of the control authority for the purpose of determining whether the provisions of sections 2-952 to 2-965 ~~2-964~~ and the rules and regulations of the director have been complied with. He or she shall compile such data on infested areas and areas controlled and such other reports as the director or control authority may require; consult and advise upon matters pertaining to the best and most practical methods of noxious weed control; and render assistance and direction for the most effective control; investigate or aid in the investigation and prosecution of any violation of sections 2-952 to 2-965 ~~2-964~~; and perform such other duties as required by the control authority in the performance of its duties. Weed control superintendents shall cooperate and assist one another to the extent practicable. County weed control superintendents shall supervise the carrying out of the coordinated control program within the county.

(c) In cases involving counties in which municipalities have ordinances for weed control, the weed control authority may enter into agreements with municipal authorities for the enforcement of local weed ordinances and may follow collection procedures as may be established by such ordinance or ordinances. All money received shall be deposited in the weed control authority fund.

Sec. 3. That section 2-955, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-955. (1) Notices for control of noxious weeds shall consist of two kinds: General notices, on a form prescribed by the director, and individual notices, on a form prescribed by this section. Failure to publish general weed notices or to serve individual notices as provided in this section shall not relieve any person from the necessity of full compliance with sections 2-952 to 2-965 ~~2-964~~ and rules and regulations thereunder.

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

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

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

County Weed Control Authority

NOTICE

Section 2-952, Reissue Revised Statutes of Nebraska, 1943, places an affirmative duty upon every person to control noxious weeds on land under such person's ownership or control. Information received by the board, including an onsite investigation by the county weed control superintendent or a deputy, indicated the existence of an uncontrolled noxious weed infestation on property owned by you at:

.....  
The method of control recommended by the control authority is as follows:

.....  
Other appropriate control methods are acceptable.

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

Superintendent of Weed Control Authority

.....  
Chairperson of Weed Control Board

Dated

..... ;  
or (ii)

County Weed Control Authority

NOTICE

Section 2-952, Reissue Revised Statutes of Nebraska, 1943, places an affirmative duty upon every person to control noxious weeds on land under such person's ownership or control. Information received by

the board, including an onsite investigation by the county weed control superintendent or a deputy, indicates the existence of an uncontrolled noxious weed infestation on property owned by you at:

.....  
The method of control recommended by the control authority is as follows:

.....  
Other appropriate control methods are acceptable. If, within fifteen days from the date specified at the bottom of this notice, the noxious weed infestation on such property, as specified above, has not been brought under control, you may, upon conviction, be subject to a fine of \$50.00 per day for each day of noncompliance up to a maximum of fifteen days of noncompliance (maximum \$750).

Upon request to the board, within fifteen days from the date specified at the bottom of this notice, you are entitled to a hearing before the board to challenge the existence of a noxious weed infestation on property owned by you at .....

.....  
Superintendent of Weed Control Authority

.....  
Chairperson of Weed Control Board

.....  
Dated.

In all counties having a population of three hundred thousand or more inhabitants, the control authority or the director may dispense with the individual notices and may publish general notices if published in one or more legal newspapers of general circulation throughout the area over which such control authority has jurisdiction. Such notice shall be published weekly for four successive weeks prior to May 1 of each year or at such other times as the director or control authority deems necessary. In no event shall a fine be assessed against a landowner as prescribed in subdivision (3)(a) of this section, unless the control authority has caused individual notice to be served upon the landowner as specified in this subdivision.

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

(3) Whenever the owner of the land on which noxious weeds are present has neglected or failed to control them as required pursuant to sections 2-952 to



2-965 ~~2-964~~ and any notice given pursuant to subsection (1) of this section, the control authority having jurisdiction shall proceed as follows:

(a) If, within fifteen days from the date specified on the notice required by subdivision (1)(b)(ii) of this section, the owner has not taken action to control the noxious weeds on the specified property and has not requested a hearing pursuant to subsection (2) of this section, the control authority shall notify the county attorney who shall proceed against such owner as prescribed in this subdivision. A person who is responsible for an infestation of noxious weeds on particular land under his or her ownership and who refuses or fails to control the weeds on the infested area within the time designated in the notice delivered by the control authority shall, upon conviction, be guilty of an infraction pursuant to sections 29-431 to 29-438, except that the penalty shall be a fine of fifty dollars per day for each day of violation up to a total of seven hundred fifty dollars for fifteen days of noncompliance; or

(b) If within ten days from the date specified in the notice required by subdivision (1)(b)(i) of this section, the owner has not taken action to control the noxious weeds on the specified property and the stage of growth of such noxious weeds warrants immediate control to prevent spread of the infestation to neighboring property, the control authority may cause proper control methods to be used on such infested land, including necessary destruction of growing crops, and shall advise the record owner of the cost incurred in connection with such operation. The cost of any such control shall be at the expense of the owner. In addition the control authority shall immediately cause notice to be filed of possible unpaid weed control assessments against the property upon which the control measures were used in the register of deeds office in the county where the property is located. If unpaid for two months, the weed control authority shall certify to the county treasurer the amount of such expense and such expense shall become a lien on the property upon which the control measures were taken as a special assessment levied on the date of control. The county treasurer shall add such expense to and it shall become and form a part of the taxes upon such land and shall bear interest at the same rate as taxes.

Nothing contained in this section shall be construed to limit satisfaction of the obligation imposed hereby in whole or in part by tax foreclosure

proceedings. The expense may be collected by suit instituted for that purpose as a debt due the county or by any other or additional remedy otherwise available. Amounts collected under subdivision (3)(b) of this section shall be deposited to the noxious weed control fund of the control authority.

Sec. 4. That section 2-958, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-958. There is hereby authorized to be established a noxious weed control fund for each control authority, which shall be available for expenses authorized to be paid from such fund including necessary expenses of the control authority in carrying out its duties and responsibilities under sections 2-952 to 2-965 ~~2-964~~. The weed control superintendents within the county shall ascertain and tabulate each year the approximate amount of land infested with noxious weeds and its location in the county, and shall ascertain and prepare all information required by the county board in the preparation of the county budget including actual and expected revenue from all sources, cash balances, expenditures, amounts proposed to be expended during the year, and working capital, and shall transmit such information tabulated by control authorities not later than June 1 of each year. On the basis of such information, the county board shall make a tax levy each year for the purpose of paying the expenses authorized to be paid from the noxious weed control fund. Funds so collected shall be deposited to such noxious weed control fund.

Sec. 5. That section 2-961, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-961. The director, any control authority, weed control superintendent, or anyone authorized thereby, may enter upon all land under ~~their~~ his or her jurisdiction for the purpose of performing ~~their~~ the duties and exercising ~~their~~ the powers under sections 2-952 to 2-965 ~~2-964~~, including the taking of specimens of weeds or other materials, without the consent of the person owning or controlling such land and without being subject to any action for trespass or damages, including damages for destruction of growing crops, if reasonable care is exercised.

Sec. 6. That section 2-962, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-962. All individual notices, service of

which is provided for in sections 2-952 to ~~2-965~~ 2-964, shall be in writing. Service of such notices shall be in the same manner as service of a summons in a civil action in the district court or by certified mail to the last-known address to be ascertained, if necessary, from the last tax list.

Sec. 7. That section 2-963, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-963. (1) Any person who intrudes upon any land under quarantine or who moves or causes to be moved any article covered by section 2-957 except as provided therein, prevents or threatens to prevent entry upon land as provided in section 2-961, or interferes with the carrying out of the provisions of sections 2-952 to ~~2-965~~ 2-964, shall be guilty of a Class IV misdemeanor in addition to any penalty imposed pursuant to section 2-955.

(2) It shall be the duty of the county attorney of the county in which any violation of section 2-955 or this section occurs, when notified of such violation by the county board or weed control authority, to cause appropriate proceedings to be instituted and pursued in the appropriate court without delay.

Sec. 8. That section 2-964, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-964. The director may participate in any noxious weed control program and, when called upon to do so by any such program, may use any funds available to him or her for the purposes of sections 2-952 to ~~2-965~~ 2-963 in the matching of any federal funds made available to this state.

Sec. 9. That section 2-966, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-966. Title to any real estate standing in the name of any noxious weed control district created under ~~the provisions of~~ sections 2-910 to 2-951, which district was dissolved by the repeal of such sections by Laws 1965, Chapter 7, section 15, is hereby quieted in the county in which such real estate is located. Any such real estate shall be held by the county for the use of the county weed control authority created pursuant to sections 2-952 to ~~2-965~~ 2-964 or may be sold and the proceeds from such sale deposited to the credit of the county noxious weed control fund, as provided by section 2-965-

Sec. 10. That section 2-1221, Revised

Statutes Supplement, 1986, be amended to read as follows:

2-1221. Except as provided in section 2-~~1221-01~~, ~~whoever~~ Whoever directly or indirectly, accepts anything of value to be wagered or to be transmitted or delivered for wager in any parimutuel or certificate system of wagering on horseraces, or delivers anything of value which has been received outside of the enclosure of a racetrack holding a race meet licensed under Chapter 2, article 12, to be placed as wagers in the parimutuel pool or certificate system of wagering on horseracing within such enclosure shall be guilty of a Class II misdemeanor.

Sec. 11. That section 2-2303, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-2303. As used in sections 2-2301 to 2-2319, ~~and 2-2320~~, unless the context otherwise requires:

(1) Board shall mean the Nebraska Wheat Development, Utilization, and Marketing Board;

(2) Grower shall mean any landowner personally engaged in growing wheat, a tenant of the landowner personally engaged in growing wheat, and both the owner and the tenant jointly, and includes a person, partnership, association, corporation, cooperative, trust, sharecropper, and any and all other business units, devices, and arrangements;

(3) First purchaser shall mean any person, public or private corporation, association, or partnership buying, accepting for shipment, or otherwise acquiring the property in or to wheat from a grower, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, ~~where when~~ the actual or constructive possession of such wheat is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

(4) Commercial channels shall mean the sale of wheat for any use, when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any wheat or product produced from wheat; and

(5) Sale shall also include any pledge or mortgage of wheat, after harvest, to any person, public or private.

Sec. 12. That section 2-2310, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-2310. The board may establish an administrative office in the State of Nebraska at such

place as may be suitable for the furtherance of sections 2-2301 to ~~2-2320~~ 2-2319. The board shall not purchase, construct, or otherwise obtain title to its own administrative office, but shall be limited to leasing state or commercial office space.

Sec. 13. That section 2-2311, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-2311. (1) There is hereby levied an excise tax of not to exceed seven and one half mills per bushel upon all wheat sold through commercial channels in the State of Nebraska. The tax is levied and imposed on the grower at the time of sale or delivery, and shall be collected by the first purchaser. Under the provisions of sections 2-2301 to ~~2-2320~~ 2-2319, no wheat shall be subject to the tax more than once.

(2) The board shall have the power to reduce the excise tax for such period as it shall deem justified, but not less than one year, whenever it shall determine that the excise tax provided by this section is yielding more than is required to carry out the intent and purposes of sections 2-2301 to ~~2-2320~~ 2-2319. If the board, after reducing such excise tax, finds that sufficient revenue is not being produced by such excise tax, it may restore in full or in part such excise tax not to exceed seven and one half mills per bushel.

(3) For purposes of this section wheat which is received by a grower pursuant to any federal program shall not be subject to the tax levied and imposed pursuant to this section until sold or delivered by such grower and shall not be construed as having previously been subject to the excise tax imposed under subsection (1) of this section.

Sec. 14. That section 2-2317, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-2317. The State Treasurer is hereby directed to establish and set up in the treasury of the State of Nebraska a fund to be known as the Nebraska Wheat Development, Utilization, and Marketing Fund, to which fund shall be credited, for the uses and purposes of sections 2-2301 to ~~2-2320~~ 2-2319 and their enforcement, all taxes collected by the board pursuant to sections 2-2301 to 2-2319. After appropriation, the Director of Administrative Services shall, upon receipt of proper vouchers approved by an officer of the board, issue his or her warrants on such fund, and the State Treasurer shall pay the same out of the money credited to such fund. The board shall at each regular meeting

review and approve all expenditures made since its last regular meeting. Any money in the Nebraska Wheat Development, Utilization, and Marketing Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to 72-1269.

Sec. 15. That section 2-2318, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-2318. The Nebraska Wheat Development, Utilization, and Marketing Board shall not be authorized to set up research or development units or agencies of its own, but shall limit its activity to cooperation and contracts, not exceeding one year in duration, with the Department of Agriculture, the Institute of Agriculture and Natural Resources of the University of Nebraska, or other proper local, state, or national organizations, public or private, in carrying out the purposes of sections 2-2301 to ~~2-2320~~ 2-2319.

Sec. 16. That original sections 2-953, 2-954, 2-955, 2-958, 2-961, 2-962, 2-963, 2-964, 2-966, 2-2303, 2-2310, 2-2311, 2-2317, and 2-2318, Reissue Revised Statutes of Nebraska, 1943, and section 2-1221, Revised Statutes Supplement, 1986, and also sections 2-104, 2-105, 2-965, 2-2320, 2-2504.01, 2-2507, 2-3205, and 2-3258, Reissue Revised Statutes of Nebraska, 1943, and section 2-1221.01, Revised Statutes Supplement, 1986, are repealed.