Z-0578.1

SENATE BILL 5281

State of Washington 55th Legislature 1997 Regular Session

By Senators Morton, Rasmussen and Stevens; by request of Department of Agriculture

Read first time 01/21/97. Referred to Committee on Agriculture & Environment.

AN ACT Relating to noxious weeds; amending RCW 17.10.905, 17.10.010, 17.10.020, 17.10.030, 17.10.040, 17.10.050, 17.10.060, 17.10.070, 17.10.074, 17.10.080, 17.10.090, 17.10.100, 17.10.110, 17.10.120, 17.10.130, 17.10.134, 17.10.140, 17.10.145, 17.10.154, 17.10.160, 17.10.170, 17.10.180, 17.10.190, 17.10.210, 17.10.235, 17.10.240, 17.10.250, 17.10.300, 17.10.310, 17.10.350, 17.10.890, and 17.10.900; adding new sections to chapter 17.10 RCW; recodifying RCW 17.10.905; and repealing RCW 17.10.005, 17.10.150, 17.10.200, 17.10.205, 17.10.320, 17.10.330, and 17.10.340.

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

Sec. 1. RCW 17.10.905 and 1975 1st ex.s. c 13 s 17 are each amended to read as follows:

The purpose of this chapter is to limit ((~~economic loss due to the presence and spread of noxious weeds on or near agricultural land~~)) <u>adverse effects to Washington's agricultural, natural, and human resources due to the presence and spread of noxious weeds on all terrestrial and aquatic lands in the state</u>.

The intent of the legislature is that this chapter be liberally construed, and that the jurisdiction, powers, and duties granted to the

county noxious weed control boards by this chapter are limited only by specific provisions of this chapter or other state and federal law.

Sec. 2. RCW 17.10.010 and 1995 c 255 s 6 are each amended to read as follows:

((~~Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Noxious weed" means ((~~any~~)) a plant ((~~which~~)) that when established is highly destructive, competitive, or difficult to control by cultural or chemical practices.

(2) "State noxious weed list" means a list of noxious weeds adopted by the state noxious weed control board ((~~which~~)). The list is divided into three classes:

(a) Class A ((~~shall~~)) consists of those noxious weeds not native to the state that are of limited distribution or are unrecorded in the state and that pose a serious threat to the state;

(b) Class B ((~~shall~~)) consists of those noxious weeds not native to the state that are of limited distribution or are unrecorded in a region of the state and that pose a serious threat to that region;

(c) Class C ((~~shall~~)) consists of any other noxious weeds.

(3) "Person" means any individual, partnership, corporation, firm, the state or any department, agency, or subdivision thereof, or any other entity.

(4) "Owner" means the person in actual control of property, or his or her agent, whether ((~~such~~)) the control is based on legal or equitable title or on any other interest entitling the holder to possession and, for purposes of liability, pursuant to RCW 17.10.170 or 17.10.210, means the possessor of legal or equitable title or the possessor of an easement: PROVIDED, That when the possessor of an easement has the right to control or limit the growth of vegetation within the boundaries of an easement, only the possessor of ((~~such~~)) the easement ((~~shall be~~)) is deemed, for the purpose of this chapter, an "owner" of the property within the boundaries of ((~~such~~)) the easement.

(5) As pertains to the duty of an owner, the words "control", "contain", "eradicate", and the term "prevent the spread of noxious

weeds" ((~~shall~~)) mean<u>s</u> conforming to the standards of noxious weed control or prevention <u>in this chapter or as</u> adopted by rule ((~~or regulation~~)) <u>in chapter 16-750 WAC</u> by the state noxious weed control board and an activated county noxious weed control board.

(6) "Agent" means any occupant or any other person acting for the owner and working or in charge of the land.

(7) "Agricultural purposes" are those ((~~which~~)) <u>that</u> are intended to provide for the growth and harvest of food and fiber.

(8) "Director" means the director of the department of agriculture or the director's appointed representative.

(9) "Weed district" means a weed district as defined in chapters 17.04 and 17.06 RCW.

(10) "Aquatic noxious weed" means an aquatic plant species that is listed on the state weed list under RCW 17.10.080.

<u>(11) "Screenings" means a mixture of mill or elevator run mixture or a combination of varying amounts of materials obtained in the process of cleaning either grain or seeds, or both, such as light or broken grain or seed, weed seeds, hulls, chaff, joints, straw, elevator dust, floor sweepings, sand, and dirt.</u>

Sec. 3. RCW 17.10.020 and 1969 ex.s. c 113 s 2 are each amended to read as follows:

(1) In each county of the state there is ((~~hereby~~)) created a noxious weed control board, ((~~which shall~~)) bear<u>ing</u> the name of the county within which it is located. The jurisdictional boundaries of each board ((~~shall be coextensive with~~)) <u>are</u> the boundaries of the county within which it is located.

(2) Each noxious weed control board ((~~shall be~~)) <u>is</u> inactive until activated pursuant to the provisions of RCW 17.10.040.

Sec. 4. RCW 17.10.030 and 1987 c 438 s 2 are each amended to read as follows:

There is ((~~hereby~~)) created a state noxious weed control board ((~~which shall be~~)) comprised of nine voting members <u>and three nonvoting members</u>. Four of the <u>voting</u> members shall be elected by the members of the various activated county noxious weed control boards, <u>and</u> shall be residents of a county in which a county noxious weed control board has been activated and a member of said board, and those qualifications shall continue through their term of office. Two ((~~such~~)) <u>of these</u>

members shall be elected from the west side of the state, the crest of the Cascades being the dividing line, and two from the east side of the state. The director of agriculture ((~~shall be~~)) is a voting member of the board. One voting member shall be elected by the directors of the various active weed districts formed under chapter 17.04 or 17.06 RCW. The Washington state association of counties ((~~shall~~)) appoints one voting member who shall be a member of a county legislative authority. ((~~The director shall appoint three nonvoting members representing scientific disciplines relating to weed control.~~)) The director shall ((~~also~~)) appoint two voting members to represent the public interest, one from the west side and one from the east side of the state. The director shall also appoint three nonvoting members representing scientific disciplines relating to weed control. The term of office for all members of the board ((~~shall be~~)) is three years from the date of election or appointment.

The board, by rule, shall establish a position number for each elected position of the board and shall designate which county noxious weed control board members are eligible to vote for each elected position. The elected members ((~~shall~~)) serve staggered terms. Elections for the elected members of the board shall be held thirty days prior to the expiration date of their respective terms. Nominations and elections shall be by mail and conducted by the board.

The board shall conduct its first meeting within thirty days after all its members have been elected. The board shall elect from its members a ((~~chairman~~)) chair and ((~~such~~)) other officers as may be necessary. A majority of the voting members of the board ((~~shall~~)) constitutes a quorum for the transaction of business and ((~~shall be~~)) is necessary for any action taken by the board. The members of the board ((~~shall~~)) serve without salary, but shall be reimbursed for travel expenses incurred in the performance of their duties under this chapter in accordance with RCW 43.03.050 and 43.03.060 ((~~as now existing or hereafter amended~~)).

Sec. 5. RCW 17.10.040 and 1987 c 438 s 3 are each amended to read as follows:

An inactive county noxious weed control board may be activated by any one of the following methods:

(1) Either within sixty days after a petition is filed by one hundred registered voters within the county or, on its own motion, the

county legislative authority shall hold a hearing to determine whether there is a need, due to a damaging infestation of noxious weeds, to activate the county noxious weed control board. If such a need is found to exist, then the county legislative authority shall, in the manner provided by RCW 17.10.050, appoint five persons to ((~~hold seats on~~)) the county's noxious weed control board.

(2) If the county's noxious weed control board is not activated within one year following a hearing by the county legislative authority to determine the need for activation, then upon the filing with the state noxious weed control board of a petition comprised either of the signatures of at least two hundred registered voters within the county, or of the signatures of a majority of an adjacent county's noxious weed control board, the state board shall, within six months of the date of ((~~such~~)) the filing, hold a hearing in the county to determine the need for activation. If a need for activation is found to exist, then the state board shall order the county legislative authority to activate the county's noxious weed control board and to appoint members to ((~~such~~)) the board in the manner provided by RCW 17.10.050.

(3) The director, ((~~with notice to~~)) upon request of the state noxious weed control board, ((~~may~~)) shall order a county legislative authority to activate the noxious weed control board immediately if an infestation of a class A noxious weed or class B noxious weed designated for control ((~~within the region wherein the county lies as defined in RCW 17.10.080~~)) on the state noxious weed list is confirmed in that county. The county is liable for all expenses, costs, and attorneys' fees incurred by the director in enforcing such an order. The county legislative authority may, as an alternative to activating the noxious weed board, combat the class A noxious weed or class B noxious weed with county resources and personnel operating with the authorities and responsibilities imposed by this chapter on a county noxious weed control board. No county may continue without a noxious weed control board for a second consecutive year if the class A noxious weed or class B noxious weed ((~~designated for control within the region wherein the county lies~~)) has not been eradicated.

Sec. 6. RCW 17.10.050 and 1987 c 438 s 4 are each amended to read as follows:

(1) Each activated county noxious weed control board ((~~shall~~)) consists of five voting members ((~~who shall be~~)) appointed by the

county legislative authority. In appointing ((~~such~~)) the voting members, the county legislative authority shall divide the county into five ((~~sections, none of which shall overlap and each of which shall be of the same approximate area~~)) geographical areas that best represent the county's interests, and ((~~shall~~)) appoint a voting member from each ((~~section~~)) geographical area. ((~~At least four of the voting members shall be engaged in the primary production of agricultural products~~)) The voting members must represent the best interests of the county, including those of agricultural production in the region, due to the impact of noxious weeds on agriculture. There ((~~shall be~~)) is one nonvoting member on ((~~such~~)) the board who ((~~shall be~~)) is the ((~~chief~~)) chair of the county extension ((~~agent~~)) office or an extension agent appointed by the ((~~chief~~)) chair of the county extension ((~~agent~~)) office. Each voting member of the board ((~~shall~~)) serves a term of four years, except that the county legislative authority shall, when a board is first activated under this chapter, designate two voting members to serve terms of two years. The board members shall not receive a salary but shall be compensated for actual and necessary expenses incurred in the performance of their official duties.

(2) The voting members of the board ((~~shall represent the same sections designated by the county legislative authority in appointing members to the board at its inception and shall~~)) serve until their replacements are appointed. New members of the board shall be appointed at least thirty days prior to the expiration of any board member's term of office.

Notice of expiration of a term of office shall be published at least twice in a weekly or daily newspaper of general circulation in ((~~said~~)) the section with last publication occurring at least ten days prior to the nomination. All persons interested in appointment to the board and residing in the ((~~section~~)) geographical area with a pending nomination shall make a written application that includes the signatures of at least ten registered voters residing in the ((~~section~~)) geographical area supporting the nomination to the county noxious weed control board. After nominations close, the county noxious weed control board shall, after a hearing, send the applications to the county legislative authority recommending the names of the most qualified candidates, and ((~~shall~~)) post the names of those nominees in the county courthouse and ((~~in three places in the~~

~~section~~)) publish in at least one newspaper of general circulation in the county. The county legislative authority, within ten days of receiving the list of nominees, shall appoint one of those nominees to the county noxious weed control board to represent that ((~~section~~)) geographical area during that term of office.

(3) Within thirty days after all the members have been appointed, the board shall conduct its first meeting. A majority of the voting members of the board ((~~shall~~)) constitutes a quorum for the transaction of business and ((~~shall be~~)) is necessary for any action taken by the board. The board shall elect from its members a ((~~chairperson~~)) chair and ((~~such~~)) other officers as may be necessary.

(4) In case of a vacancy occurring in any voting position on a county noxious weed control board, the county legislative authority of the county in which ((~~such~~)) the board is located shall appoint a qualified person to fill the vacancy for the unexpired term.

Sec. 7. RCW 17.10.060 and 1987 c 438 s 5 are each amended to read as follows:

(1) Each activated county noxious weed control board ((~~may~~)) shall employ a weed coordinator whose duties ((~~shall be~~)) are fixed by the board but which shall include inspecting land to determine the presence of noxious weeds, offering technical assistance and education, and developing a program to achieve compliance with the weed law. Within sixty days from initial employment the weed coordinator shall obtain a pest control consultant license, a pesticide operator license, and the necessary endorsements on the licenses as required by law. Each board may purchase, rent, or lease ((~~such~~)) equipment, facilities, or products and may hire ((~~such~~)) additional persons as it deems necessary for the administration of the county's noxious weed control program.

(2) Each activated county noxious weed control board ((~~shall have~~)) has the power to adopt ((~~such~~)) rules and regulations, subject to notice and hearing as provided in chapters 42.30 and 42.32 RCW ((~~as now or hereafter amended~~)), as are necessary for an effective county weed control or eradication program.

(3) Each activated county noxious weed control board shall meet with a quorum at least quarterly.

Sec. 8. RCW 17.10.070 and 1987 c 438 s 6 are each amended to read as follows:

(1) In addition to the powers conferred on the state noxious weed control board under other provisions of this chapter, it ((~~shall have~~)) has the power to:

(a) Employ a state noxious weed control board executive secretary ((~~who shall~~)), and additional persons as it deems necessary, to disseminate information relating to noxious weeds to county noxious weed control boards and weed districts ((~~and who shall work~~)), to coordinate the educational and weed control efforts of the various county and regional noxious weed control boards and weed districts, and to assist the board in carrying out its responsibilities;

(b) Adopt, amend, ((~~change,~~)) or repeal ((~~such~~)) rules, pursuant to the administrative procedure act, chapter 34.05 RCW, as may be necessary to carry out the duties and authorities assigned to the board by this chapter.

(2) The state noxious weed control board shall provide a written report before January 1 of each odd-numbered year to the governor, the legislature, the county noxious weed control boards, and the weed districts showing the ((~~funds disbursed by the department to each noxious weed control board or district,~~)) expenditure of state funds on noxious weed control; specifically how the funds were spent((~~,~~)); the status of the state, county, and district programs; and recommendations for the continued best use of state funds for noxious weed control. The report shall include recommendations as to the long-term needs regarding weed control.

Sec. 9. RCW 17.10.074 and 1987 c 438 s 7 are each amended to read as follows:

(1) In addition to the powers conferred on the director under other provisions of this chapter, the director ((~~shall~~)), with the advice of the state noxious weed control board, ((~~have~~)) has power to:

(a) Require the county legislative authority or the noxious weed control board of any county or any weed district to report to it concerning the presence, absence, or estimated amount of noxious weeds and measures, if any, taken or planned for the control thereof;

(b) Employ ((~~such~~)) staff as may be necessary in the administration of this chapter;

(c) Adopt, amend, ((~~change,~~)) or repeal ((~~such~~)) rules, pursuant to the administrative procedure act, chapter 34.05 RCW, as may be necessary to carry out this chapter;

(d) Do such things as may be necessary and incidental to the administration of its functions pursuant to this chapter including but not limited to surveying for and detecting noxious weed infestations;

(e) Upon receipt of a complaint signed by a majority of the members of an adjacent county noxious weed control board or weed district, or by fifty registered voters within the county, require the county legislative authority or noxious weed control board of the county or weed district that is the subject of the complaint to respond to the complaint within forty-five days with a plan for the control of the noxious weeds cited in the complaint;

(f) If the complaint in ((~~subsection~~)) (e) of this subsection involves a class A or class B noxious weed, order the county legislative authority, noxious weed control board, or weed district to take immediate action to eradicate or control the noxious weed infestation. If the county or the weed district does not take action to control the noxious weed infestation in accordance with the order, the director may control it or cause it to be controlled. The county or weed district ((~~shall be~~)) is liable for payment of the expense of the control work including necessary costs and expenses for attorneys' fees incurred by the director in securing payment from the county or weed district. The director may bring a civil action in a court of competent jurisdiction to collect the expenses of the control work, costs, and attorneys' fees;

(g) In counties ((~~which have not activated their~~)) without an activated noxious weed control board, enter upon any property as provided for in RCW 17.10.160, issue or cause to be issued notices and citations and take the necessary action to control noxious weeds as provided in RCW 17.10.170, hold hearings on any charge or cost of control action taken as provided for in RCW 17.10.180, issue a notice of civil infraction as provided for in RCW 17.10.230((~~,~~)) and 17.10.310 through 17.10.350, and place a lien on any property pursuant to RCW 17.10.280, 17.10.290, and 17.10.300 with the same authorities and responsibilities imposed by these sections on county noxious weed control boards;

(h) Adopt a list of noxious weed seeds and toxic weeds which shall be controlled in designated articles, products, or feed stuffs as provided for in RCW 17.10.235.

(2) The moneys appropriated for noxious weed control to the department shall be used for administration of the state noxious weed

control board ((~~for determining the economic impact of noxious weeds in the state of Washington~~)), the administration of the director's powers under this chapter, the purchase of materials for controlling, containing, or eradicating noxious weeds, the purchase or collection of biological control agents for controlling noxious weeds, and the contracting for services to carry out the purposes of this chapter. In a county with an activated noxious weed control board, the director shall make every effort to contract with that board for the needed services.

(3) If the director determines the need to reallocate funds previously designated for county use, the director shall convene a meeting of the state noxious weed control board to seek its advice concerning any reallocation.

Sec. 10. RCW 17.10.080 and 1989 c 175 s 57 are each amended to read as follows:

(1) The state noxious weed control board shall each year or more often, following a hearing, adopt a state noxious weed list.

(2) ((~~At the hearing~~)) Any person may request during a comment period established by the state weed board the inclusion, deletion, or designation change of any plant to the ((~~lists to be adopted by the state noxious weed control board. Any hearing held pursuant to this section shall conform to the Administrative Procedure Act, chapter 34.05 RCW: PROVIDED, That adding a weed to or deleting a weed from the list shall constitute a substantial change as provided for in RCW 34.05.340~~)) state noxious weed list.

(3) The state noxious weed control board shall send a copy of the list((~~s~~)) to each activated county noxious weed control board, ((~~to each regional noxious weed control board,~~)) to each weed district, and to the county legislative authority of each county with an inactive noxious weed control board.

(4) The record of ((~~hearing shall~~)) rule making must include the written findings of the board for the inclusion of each plant on the list. ((~~Such~~)) The findings shall be made available upon request to any interested person.

Sec. 11. RCW 17.10.090 and 1987 c 438 s 9 are each amended to read as follows:

Each county noxious weed control board shall, within ((~~thirty~~)) ninety days of the ((~~receipt~~)) adoption of the state noxious weed list from the state noxious weed control board and following a hearing, select those weeds from the class C list and those weeds from the class B list not designated for control in the noxious weed control region in which the county lies ((~~which~~)) that it finds necessary to be controlled in the county. The weeds thus selected and all class A weeds and those class B weeds that have been designated for control in the noxious weed control region in which the county lies shall be classified within that county as noxious weeds, and those weeds ((~~shall~~)) comprise the county noxious weed list.

Sec. 12. RCW 17.10.100 and 1987 c 438 s 10 are each amended to read as follows:

Where any of the following occur, the state noxious weed control board may, following a hearing, order any county noxious weed control board or weed district to include a noxious weed from the state board's list in the county's noxious weed list:

(1) Where the state noxious weed control board receives a petition from at least one hundred registered voters within the county requesting that the weed be listed.

(2) Where the state noxious weed control board receives a request for ((~~such~~)) inclusion from an adjacent county's noxious weed control board or weed district, which the adjacent board or district has included that weed in ((~~the~~)) its county list, and ((~~which~~)) the adjacent board or weed district alleges that its noxious weed control program is being hampered by the failure to include the weed on the county's noxious weed list.

Sec. 13. RCW 17.10.110 and 1987 c 438 s 11 are each amended to read as follows:

A regional noxious weed control board comprising the area of two or more counties may be created as follows:

Either the county legislative authority ((~~and/or~~)), or the noxious weed control board, or both, of two or more counties may, upon a determination that the purpose of this chapter will be served by the creation of a regional noxious weed control board, adopt a resolution providing for a limited merger of the functions of their respective counties noxious weed control boards. ((~~Such~~)) The resolution

((~~shall~~)) becomes effective only when a similar resolution is adopted by the other county or counties comprising the proposed regional board.

Sec. 14. RCW 17.10.120 and 1987 c 438 s 12 are each amended to read as follows:

In any case where a regional noxious weed control board is created, the county noxious weed control boards comprising the regional board shall still remain in existence and shall retain all powers and duties provided for ((~~such~~)) the boards under this chapter.

The regional noxious weed control board ((~~shall be~~)) is comprised of the voting members and the nonvoting members of the component counties noxious weed control boards or county legislative authorities who shall, respectively, be the voting and nonvoting members of the regional board: PROVIDED, That each county shall have an equal number of voting members. The board may appoint other nonvoting members as deemed necessary. A majority of the voting members of the board ((~~shall~~)) constitutes a quorum for the transaction of business and ((~~shall be~~)) is necessary for any action taken by the board. The board shall elect a ((~~chairperson~~)) chair from its members and ((~~such~~)) other officers as may be necessary. Members of the regional board ((~~shall~~)) serve without salary but shall be compensated for actual and necessary expenses incurred in the performance of their official duties.

Sec. 15. RCW 17.10.130 and 1987 c 438 s 13 are each amended to read as follows:

The powers and duties of a regional noxious weed control board are as follows:

(1) The regional board shall, within ((~~thirty~~)) ninety days of the ((~~receipt~~)) adoption of the state noxious weed list from the state noxious weed control board and following a hearing, select those weeds from the state list ((~~which~~)) that it finds necessary to be controlled on a regional basis. The weeds thus selected shall also be contained in the county noxious weed list of each county in the region.

(2) The regional board shall take ((~~such~~)) action as may be necessary to coordinate the noxious weed control programs of the region and ((~~shall~~)) adopt a regional plan for the control of noxious weeds.

Sec. 16. RCW 17.10.134 and 1987 c 438 s 14 are each amended to read as follows:

Obligations or liabilities incurred by any county or regional noxious weed control board or any claims against a county or regional noxious weed control board ((~~shall be~~)) are governed by chapter 4.96 RCW or RCW 4.08.120: PROVIDED, That individual members or employees of a county noxious weed control board ((~~shall be~~)) are personally immune from civil liability for damages arising from actions performed within the scope of their official duties or employment.

Sec. 17. RCW 17.10.140 and 1969 ex.s. c 113 s 14 are each amended to read as follows:

((~~Except as is provided under RCW 17.10.150,~~)) Every owner shall perform((~~,~~)) or cause to be performed ((~~such~~)) those acts as may be necessary to ((~~control and to prevent the spread of noxious weeds from his~~)):

(1) Eradicate all class A noxious weeds;

(2) Control and prevent the spread of all class B noxious weeds designated for control in that region within and from the owner's property; and

(3) Control and prevent the spread of all class B and class C noxious weeds listed on the county weed list within and from the owner's property.

Sec. 18. RCW 17.10.145 and 1995 c 374 s 75 are each amended to read as follows:

All state agencies shall control noxious weeds on lands they own, lease, or otherwise control. Agencies shall develop plans to control noxious weeds in accordance with standards in this chapter. All state agencies' lands must comply with this chapter, regardless of noxious weed control efforts on adjacent lands. ((~~County noxious weed control boards shall assist landowners to meet and exceed the standards on state lands.~~))

Sec. 19. RCW 17.10.154 and 1987 c 438 s 16 are each amended to read as follows:

((~~It is recognized that the prevention, control, and eradication of noxious weeds presents a problem for immediate as well as for future action. It is further recognized that immediate prevention, control, and eradication is practicable on some lands and that prevention, control, and eradication on other lands should be extended over a~~

~~period of time. Therefore, it is the intent of this chapter that~~)) County noxious weed control boards may use their discretion and, by agreement with the owners of land, may propose and accept plans for prevention, control, and eradication ((~~which~~)) that may be extended over a period of years. The county noxious weed control board may make an agreement with the owner of any parcel of land by contract between the landowner and the respective county noxious weed control board, and the board shall enforce the terms of any agreement. The county noxious weed control board may make any terms ((~~which~~)) that will best serve the interests of the owners of the parcel of land and the common welfare ((~~which~~)) that comply with this chapter ((~~and the rules adopted thereunder~~)).

Sec. 20. RCW 17.10.160 and 1987 c 438 s 17 are each amended to read as follows:

Any authorized agent or employee of the county noxious weed control board or of the state noxious weed control board or of the department of agriculture where not otherwise proscribed by law may enter upon any property for the purpose of administering this chapter and any power exercisable pursuant thereto, including the taking of specimens of weeds or other materials, survey and general inspection, and the performance of eradication or control work. Prior to carrying out the purpose((~~s~~)) for which the entry is made, the official making such entry or someone in his or her behalf, shall ((~~have first made~~)) make a reasonable attempt to notify the owner of the property as to the purpose and need for the entry.

(1) When there is probable cause to believe that there is property within this state not otherwise exempt from process or execution upon which noxious weeds are standing or growing and the owner ((~~thereof~~)) refuses permission to inspect the property, a judge of the superior court or district court in the county in which ((~~such~~)) the property is located may, upon the request of the county noxious weed control board or its agent, issue a warrant directed to ((~~such~~)) the board or agent authorizing the ((~~search for the noxious weeds described in the request for the warrant~~)) taking of specimens of weeds or other materials, survey and general inspection, and the performance of eradication or control work.

(2) Application for issuance and execution and return of the warrant authorized by this section shall be in accordance with the applicable rules of the superior court or the district courts.

(3) Nothing in this section requires the application for and issuance of any warrant not otherwise required by law: PROVIDED, That civil liability for negligence shall lie in any case in which entry and any of the activities connected therewith are not undertaken with reasonable care.

(4) Any person who improperly prevents or threatens to prevent entry upon land as authorized in this section or any person who interferes with the carrying out of this chapter ((~~shall be upon conviction~~)) is guilty of a misdemeanor.

Sec. 21. RCW 17.10.170 and 1987 c 438 s 18 are each amended to read as follows:

(1) Whenever the county noxious weed control board finds that noxious weeds are present on any parcel of land, and that the owner ((~~thereof~~)) is not taking prompt and sufficient action to control the ((~~same~~)) noxious weeds, pursuant to the provisions of RCW 17.10.140 ((~~and 17.10.150~~)), it shall notify the owner that a violation of this chapter exists. The notice shall be in writing and sent by certified mail, and shall identify the noxious weeds found to be present, order prompt control action, and specify the time, of at least ten days from issuance of the notice, within which the prescribed action must be taken. Upon deposit of the certified letter of notice, the noxious weed control authority shall make an affidavit of mailing ((~~which shall be~~)) that is prima facie evidence that proper notice was given. If seed ((~~dispersion~~)) or other propagule dispersion is imminent, immediate control action may be taken forty-eight hours following the time that notification is reasonably expected to have been received by the owner or agent by certified mail or personal service, instead of ten days. If a landowner received a notice of violation from the county noxious weed control board in a prior growing season, removal or destruction of all above ground plant parts may be required at the most effective point in the growing season, as determined by the county weed board, which may be before or after propagule dispersion.

(2) The county noxious weed control board or its authorized agents may issue a notice of civil infraction as provided for in RCW 17.10.230

((~~and~~)), 17.10.310 ((~~through~~)), and 17.10.350 to owners who do not take action to control noxious weeds in accordance with the notice.

(3) If the owner does not take action to control the noxious weeds in accordance with the notice, the county board may control them, or cause their being controlled, at the expense of the owner. The amount of ((~~such~~)) the expense ((~~shall~~)) constitutes a lien against the property and may be enforced by proceedings on ((~~such~~)) the lien except as provided for by RCW 79.44.060. The owner ((~~shall be~~)) is liable for payment of the expense, and nothing in this chapter shall be construed to prevent collection of any judgment on account thereof by any means available pursuant to law, in substitution for enforcement of the lien. Necessary costs and expenses including reasonable attorneys' fees incurred by the county noxious weed control board in carrying out this section may be recovered at the same time as a part of the action filed under this section. Funds received in payment for the expense of controlling noxious weeds shall be transferred to the county noxious weed control board to be expended as required to carry out the purposes of this chapter.

(4) The county auditor shall record in his or her office any lien created under this chapter, and any ((~~such~~)) lien shall bear interest at the rate of twelve percent per annum from the date on which the county noxious weed control board approves the amount expended in controlling ((~~such~~)) the weeds.

(5) As an alternative to the enforcement of any lien created under subsection (3) of this section, the county legislative authority may by resolution or ordinance require that each ((~~such~~)) lien created ((~~shall~~)) be collected by the treasurer in the same manner as a delinquent real property tax, if within thirty days from the date the owner is sent notice of the lien, including the amount thereof, the lien remains unpaid and an appeal has not been made pursuant to RCW 17.10.180. Liens treated as delinquent taxes ((~~shall~~)) bear interest at the rate of twelve percent per annum and ((~~such~~)) the interest ((~~shall~~)) accrues as of the date notice of the lien is sent to the owner: PROVIDED, That any collections for ((~~such~~)) the lien shall not be considered as tax.

Sec. 22. RCW 17.10.180 and 1987 c 438 s 19 are each amended to read as follows:

Any owner, upon request pursuant to the rules and regulation of the county noxious weed control board, ((~~shall be~~)) is entitled to a hearing before the board on any charge or cost for which the owner is alleged to be liable pursuant to RCW 17.10.170 or 17.10.210. The board shall send notice by certified mail within thirty days, to each owner at the owner's last known address, as to any ((~~such~~)) charge or cost and as to his or her right of a hearing. The hearing shall be scheduled within forty-five days of notification. Any determination or final action by the board ((~~shall be~~)) is subject to judicial review by a proceeding in the superior court in the county in which the property is located, and ((~~such~~)) the court ((~~shall have~~)) has original jurisdiction to determine any suit brought by the owner to recover damages allegedly suffered on account of control work negligently performed: PROVIDED, That no stay or injunction shall lie to delay any ((~~such~~)) control work subsequent to notice given pursuant to RCW 17.10.160 or pursuant to an order under RCW 17.10.210.

Sec. 23. RCW 17.10.190 and 1987 c 438 s 20 are each amended to read as follows:

Each activated county noxious weed control board ((~~shall cause to be published~~)) must publish annually, and at ((~~such~~)) other times as may be appropriate, in at least one newspaper of general circulation within its area, a general notice. The notice shall direct attention to the need for noxious weed control and ((~~shall~~)) give ((~~such~~)) other information ((~~with respect thereto~~)) concerning noxious weed control requirements as may be appropriate, or ((~~shall~~)) indicate where such information may be secured. In addition to the general notice required ((~~hereby~~)), the county noxious weed control board may use any appropriate media for the dissemination of information to the public as may be calculated to bring the need for noxious weed control to the attention of owners. The board may consult with individual owners concerning their problems of noxious weed control and may provide them with information and advice, including giving specific instructions and methods when and how certain named weeds are to be controlled. ((~~Such~~)) The methods may include ((~~definite systems of tillage, cropping, management, or use of livestock~~)) some combination of physical, mechanical, cultural, chemical, and/or biological methods. Publication of a notice as required by this section ((~~shall~~)) is not ((~~be~~)) a condition precedent to the enforcement of this chapter.

Sec. 24. RCW 17.10.210 and 1987 c 438 s 22 are each amended to read as follows:

(1) Whenever the director ((~~or~~)), the county noxious weed control board, or a weed district finds that a parcel of land is so seriously infested with class A or class B noxious weeds that control measures cannot be undertaken thereon without quarantining the land and restricting or denying access thereto or use thereof, the director ((~~or~~)), the county noxious weed control board, or weed district, with the approval of the director of the department of agriculture, may issue an order for ((~~such~~)) the quarantine and restriction or denial of access or use. Upon issuance of the order, the director ((~~or~~)), the county noxious weed control board, or the weed district shall commence necessary control measures and ((~~shall prosecute them with due diligence~~)) may institute legal action for the collection of costs for control work, which may include attorneys' fees and the costs of other appropriate actions.

(2) An order of quarantine shall be served, by any method sufficient for the service of civil process, on all persons known to qualify as owners of the land within the meaning of this chapter.

(3) The director shall, with the advice of the state noxious weed control board, determine how the expense of control work undertaken pursuant to this section, and the cost of any quarantine in connection therewith, ((~~shall be~~)) is apportioned.

Sec. 25. RCW 17.10.235 and 1987 c 438 s 30 are each amended to read as follows:

(1) ((~~Any person who knowingly or negligently sells a product, article, or feed stuff designated under subsection (2) of this section containing noxious weed seeds or toxic weeds designated for control under subsection (2) of this section and in an amount greater than the amount established by the director for the seed or weed under subsection (2) of this section is guilty of a misdemeanor.~~

~~(2)~~)) The director of agriculture shall adopt, with the advice of the state noxious weed control board, rules designating noxious weed seeds ((~~the presence of~~)) which shall be controlled in products, screenings, or articles to prevent the spread of noxious weeds. The rules shall identify the products, screenings, and articles in which ((~~such~~)) the seeds must be controlled and the maximum amount of ((~~such~~)) the seed to be permitted in the product, screenings, or

article to avoid a hazard of spreading the noxious weed by seed from the product, screenings, or article. The director shall also adopt, with the advice of the state board, rules designating toxic weeds ((~~the presence of~~)) which shall be controlled in feed stuffs and screenings to prevent injury to the animal that consumes the feed. The rules shall identify the feed stuffs and screenings in which the toxic weeds must be controlled and the maximum amount of the toxic weed to be permitted in ((~~such~~)) the feed.

(2) Any person who knowingly or negligently sells or otherwise distributes a product, article, screenings, or feed stuff designated by rule containing noxious weed seeds or toxic weeds designated for control by rule and in an amount greater than the amount established by the director for the seed or weed by rule is guilty of a misdemeanor.

(3) The department of agriculture shall, upon request of the buyer, inspect products, screenings, articles, or feed stuffs designated ((~~under subsection (2) of this section~~)) by rule and charge fees, in accordance with chapter 22.09 RCW, to determine the presence of designated noxious weed seeds or toxic weeds.

Sec. 26. RCW 17.10.240 and 1995 c 374 s 77 are each amended to read as follows:

(1) The activated county noxious weed control board of each county shall annually submit a budget to the county legislative authority for the operating cost of the county's weed program for the ensuing fiscal year: PROVIDED, That if the board finds the budget approved by the legislative authority is insufficient for an effective county noxious weed control program it shall petition the county legislative authority to hold a hearing as provided in RCW 17.10.890. Control of weeds is a ((~~special~~)) benefit to the lands within any such section. Funding for the budget ((~~shall be~~)) is derived from any or all of the following:

((~~(1)~~)) (a) The county legislative authority may, in lieu of a tax, levy an assessment against the land for this purpose. Prior to the levying of an assessment the county noxious weed control board shall hold a public hearing at which it ((~~shall~~)) will gather information to serve as a basis for classification and ((~~shall~~)) then classify the lands into suitable classifications, including but not limited to dry lands, range lands, irrigated lands, nonuse lands, forest lands, or federal lands. The board shall develop and forward to the county legislative authority, as a proposed level of assessment for each

class, ((~~such~~)) an amount as ((~~shall~~)) seems just. The assessment rate shall be either uniform per acre in its respective class or a flat rate per parcel rate plus a uniform rate per acre: PROVIDED, That if no ((~~special~~)) benefits ((~~should be~~)) are found to accrue to a class of land, a zero assessment may be levied. The county legislative authority, upon receipt of the proposed levels of assessment from the board, after a hearing, shall accept((~~,~~)) or modify by resolution, or refer back to the board for its reconsideration all or any portion of the proposed levels of assessment. ((~~The findings by the county legislative authority of such special benefits, when so declared by resolution and spread upon the minutes of said authority shall be conclusive as to whether or not the same constitutes a special benefit to the lands within the section.~~)) The amount of ((~~such~~)) the assessment ((~~shall~~)) constitutes a lien against the property. The county legislative authority may by resolution or ordinance require that notice of the lien be sent to each owner of property for which the assessment has not been paid by the date it was due and that each ((~~such~~)) lien created ((~~shall~~)) be collected by the treasurer in the same manner as delinquent real property tax, if within thirty days from the date the owner is sent notice of the lien, including the amount thereof, the lien remains unpaid and an appeal has not been made pursuant to RCW 17.10.180. Liens treated as delinquent taxes ((~~shall~~)) bear interest at the rate of twelve percent per annum and ((~~such~~)) the interest ((~~shall~~)) accrues as of the date notice of the lien is sent to the owner: PROVIDED FURTHER, That any collections for ((~~such~~)) the lien shall not be considered as tax; or

((~~(2)~~)) (b) The county legislative authority may appropriate money from the county general fund necessary for the administration of the county noxious weed control program. In addition the county legislative authority may make emergency appropriations as it deems necessary for the implementation of this chapter.

((~~(3)~~)) (2) Forest lands used solely for the planting, growing, or harvesting of trees and which are typified, except during a single period of five years following clear-cut logging, by canopies so dense as to prohibit growth of an understory may be subject to an annual noxious weed assessment levied by a county legislative authority that ((~~shall~~)) does not exceed one-tenth of the weighted average per acre noxious weed assessment levied on all other lands in unincorporated areas within the county that are subject to the weed assessment. This

assessment shall be computed in accordance with the formula in subsection ((~~(4)~~)) (3) of this section.

((~~(4)~~)) (3) The calculation of the "weighted average per acre noxious weed assessment" ((~~shall be~~)) is a ratio expressed as follows:

(a) The numerator ((~~shall be~~)) is the total amount of funds estimated to be collected from the per acre assessment on all lands except (i) forest lands as identified in subsection ((~~(3)~~)) (2) of this section, (ii) lands exempt from the noxious weed assessment, and (iii) lands located in an incorporated area.

(b) The denominator ((~~shall be~~)) is the total acreage from which funds in (a) of this subsection are collected. For lands of less than one acre in size, the denominator calculation may be based on the following assumptions: (i) Unimproved lands ((~~shall be~~)) are calculated as being one-half acre in size on the average, and (ii) improved lands ((~~shall be~~)) are calculated as being one-third acre in size on the average. The county legislative authority may choose to calculate the denominator for lands of less than one acre in size using other assumptions about average parcel size based on local information.

((~~(5)~~)) (4) For those counties that levy a per parcel assessment to help fund noxious weed control programs, the per parcel assessment on forest lands as defined in subsection ((~~(3)~~)) (2) of this section shall not exceed one-tenth of the per parcel assessment on nonforest lands.

Sec. 27. RCW 17.10.250 and 1987 c 438 s 32 are each amended to read as follows:

The legislative authority of any county with an activated noxious weed control board or the board of any weed district may apply to the director for noxious weed control funds when informed by the director that funds are available. Any ((~~such~~)) applicant must employ adequate administrative personnel to supervise an effective weed control program as determined by the director with advice from the state noxious weed control board. The director with advice from the state noxious weed control board shall adopt rules on the distribution and use of noxious weed control account funds.

Sec. 28. RCW 17.10.300 and 1975 1st ex.s. c 13 s 15 are each amended to read as follows:

No lien created by RCW 17.10.280 ((~~shall~~)) exists, and no action to enforce the same shall be maintained, unless within ninety days from

the date of cessation of the performance of ((~~such~~)) the labor, furnishing of materials, or the supplying of ((~~such~~)) equipment, a claim for ((~~such~~)) the lien ((~~shall be~~)) is filed for record as ((~~hereinafter~~)) provided in this section, in the office of the county auditor of the county in which the property, or some part ((~~thereof~~)) of the property to be affected ((~~thereby~~)) by the claim for a lien, is situated. ((~~Such~~)) The claim shall state, as nearly as may be, the time of the commencement and cessation of performing the labor, furnishing the material, or supplying the equipment, the name of the county noxious weed control board ((~~which~~)) that performed the labor or caused the labor to be performed, furnished the material, or supplied the equipment, a description of the property to be charged with the lien sufficient for identification, the name of the owner, or reputed owner if known, or his or her agent, and if the owner is not known, that fact shall be mentioned, the amount for which the lien is claimed, and shall be signed by the county noxious weed control board, and be verified by the oath of the county noxious weed control board, to the effect that the affiant believes that claim to be just; and ((~~such~~)) the claim of lien may be amended in case of action brought to foreclose the same, by order of the court, as pleadings may be, insofar as the interest of third parties shall not be affected by such an amendment. ((~~A claim or lien substantially in the same form provided by RCW 60.04.060 and not in conflict with this section shall be sufficient.~~))

Sec. 29. RCW 17.10.310 and 1987 c 438 s 24 are each amended to read as follows:

The county noxious weed control board may issue a notice of civil infraction if after investigation it has reasonable cause to believe an infraction has been committed. ((~~It shall be a misdemeanor for any person to refuse to identify himself or herself properly for the purpose of issuance of a notice of infraction. Any person wilfully violating a written and signed promise to respond to a notice of infraction shall be guilty of a misdemeanor regardless of the disposition of the notice of infraction.~~)) A civil infraction may be issued pursuant to RCW 7.80.005, 7.80.070 through 7.80.110, 7.80.120 (3) and (4), and 7.80.130 through 7.80.900.

Sec. 30. RCW 17.10.350 and 1987 c 438 s 28 are each amended to read as follows:

Any person found to have committed a civil infraction under this chapter shall be assessed a monetary penalty((~~. No monetary penalty so assessed may~~)) not to exceed one thousand dollars. The state noxious weed control board shall adopt a schedule of monetary penalties for each violation of this chapter classified as a civil infraction and ((~~shall~~)) submit the schedule to the appropriate court. If a monetary penalty is imposed by the court, the penalty is immediately due and payable. The court may, at its discretion, grant an extension of time, not to exceed thirty days, in which the penalty must be paid. Failure to pay any monetary penalties imposed under this chapter ((~~shall be~~)) is punishable as a misdemeanor.

Sec. 31. RCW 17.10.890 and 1987 c 438 s 37 are each amended to read as follows:

The following procedures shall be followed to deactivate a county noxious weed control board:

(1) The county legislative authority ((~~shall~~)) holds a hearing to determine whether there continues to be a need for an activated county noxious weed control board if:

(a) A petition is filed by one hundred registered voters within the county;

(b) A petition is filed by a county noxious weed control board as provided in RCW 17.10.240; or

(c) The county legislative authority passes a motion to hold such a hearing.

(2) Except as provided in subsection (4) of this section, the hearing shall be held within sixty days of final action taken under subsection (1) of this section.

(3) If, after a hearing, the county legislative authority determines that no need exists for a county noxious weed control board, due to the absence of class A or class B noxious weeds designated for control in the region, the county legislative authority shall deactivate the board.

(4) The county legislative authority shall not convene a hearing as provided for in subsection (1) of this section more frequently than once a year.

Sec. 32. RCW 17.10.900 and 1987 c 438 s 38 are each amended to read as follows:

Any weed district formed under chapter 17.04 or 17.06 RCW prior to the enactment of this chapter, ((~~shall~~)) continues to operate under the provisions of the chapter under which it was formed: PROVIDED, That if ten percent of the landowners subject to any such weed district, and the county noxious weed control board upon its own motion, petition the county legislative authority for a dissolution of the weed district, the county legislative authority shall provide for an election to be conducted in the same manner as required for the election of directors under the provisions of chapter 17.04 RCW, to determine by majority vote of those casting votes, if ((~~such~~)) the weed district ((~~shall~~)) will continue to operate under the ((~~act~~)) chapter it was formed. The land area of any dissolved weed district ((~~shall forthwith~~)) becomes subject to the provisions of this chapter. Any district assessment funds may be transferred after the dissolution election under contract to the county noxious weed control board to fund the noxious weed control program.

NEW SECTION. **Sec. 33.** A new section is added to chapter 17.10 RCW to read as follows:

(1) The state noxious weed control board shall:

(a) Work with the various federal and tribal land management agencies to coordinate state and federal noxious weed control;

(b) Encourage the various federal and tribal land management agencies to devote more time and resources to noxious weed control; and

(c) Assist the various federal and tribal land management agencies by seeking adequate funding for noxious weed control.

(2) County noxious weed control boards and weed districts shall work with the various federal and tribal land management agencies in each county in order to:

(a) Identify new noxious weed infestations;

(b) Outline and plan necessary noxious weed control actions;

(c) Develop coordinated noxious weed control programs; and

(d) Notify local federal and tribal agency land managers of noxious weed infestations.

(3) The department of agriculture, county noxious weed control boards, and weed districts are authorized to enter federal lands, with the approval of the appropriate federal agency, to survey for and control noxious weeds where control measures of a type and extent required under this chapter have not been taken.

(4) The department of agriculture, county noxious weed control boards, and weed districts may bill the federal land management agency that manages the land for all costs of the noxious weed control performed on federal land. If not paid by the federal agency that manages the land, the cost of the noxious weed control on federal land may be paid from any funds available to the county noxious weed control board or weed district that performed the noxious weed control. Alternatively, the costs of noxious weed control on federal land may be paid from any funds specifically appropriated to the department of agriculture for that purpose.

(5) The department of agriculture, county noxious weed control boards, and weed districts are authorized to enter into any reasonable agreement with the appropriate authorities for the control of noxious weeds on federal or tribal lands.

(6) The department of agriculture, county noxious weed control boards, and weed districts shall consult with state agencies managing federal land concerning noxious weed infestation and control programs.

NEW SECTION. **Sec. 34.** RCW 17.10.905 is recodified as a section between RCW 17.10.005 and 17.10.010.

NEW SECTION. **Sec. 35.** The following acts or parts of acts are each repealed:

(1) RCW 17.10.005 and 1995 c 374 s 72;

(2) RCW 17.10.150 and 1987 c 438 s 15, 1975 1st ex.s. c 13 s 7, 1974 ex.s. c 143 s 2, & 1969 ex.s. c 113 s 15;

(3) RCW 17.10.200 and 1987 c 438 s 21, 1979 c 118 s 3, & 1969 ex.s. c 113 s 20;

(4) RCW 17.10.205 and 1975 1st ex.s. c 13 s 16;

(5) RCW 17.10.320 and 1987 c 438 s 25;

(6) RCW 17.10.330 and 1987 c 438 s 26; and

(7) RCW 17.10.340 and 1987 c 438 s 27.

--- END ---