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**SENATE BILL 6401**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Senators Warnick and Saldaña

AN ACT Relating to noxious weeds; and amending RCW 17.10.010, 17.10.030, 17.10.050, 17.10.060, 17.10.070, 17.10.074, 17.10.100, 17.10.140, 17.10.145, 17.10.205, 17.10.235, 17.10.240, and 17.10.890.

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

**Sec.**  RCW 17.10.010 and 1997 c 353 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Noxious weed" means a plant 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. The list is divided into three classes:

(a) Class A 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 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 consists of any other nonnative to Washington state 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 including, but not limited to, deeded parcels, rights-of-way, and undefined lots, or his or her agent, whether 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 the easement is deemed, for the purpose of this chapter, an "owner" of the property within the boundaries of 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" means conforming to the standards of noxious weed control or prevention in this chapter or as adopted by rule in chapter 16-750 WAC 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 that 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.

(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.

(12) "Parcel" means real property having a parcel number or deeded real property, right-of-way, undefined lot, or a lot having a legal description.

**Sec.**  RCW 17.10.030 and 1997 c 353 s 4 are each amended to read as follows:

There is created a state noxious weed control board comprised of nine voting members and ((~~three~~)) four nonvoting members. Four of the voting members shall be elected by the members of the various activated county noxious weed control boards, and 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 of these 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 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 appoints one voting member who shall be a member of a county legislative authority. A statewide association representing county noxious weed coordinators appoints a nonvoting technical advisor. The director shall 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 is ((~~three~~)) four 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 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 chair and other officers as may be necessary. A majority of the voting members of the board constitutes a quorum for the transaction of business and is necessary for any action taken by the board. The members of the board 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.

**Sec.**  RCW 17.10.050 and 1997 c 353 s 6 are each amended to read as follows:

(1) Each activated county noxious weed control board consists of five voting members appointed by the county legislative authority in consultation with the county noxious weed control board. In appointing the voting members, the county legislative authority shall divide the county into five geographical areas that best represent the county's interests, and appoint a voting member from each geographical area. At least ((~~four~~)) three of the voting members shall be engaged in the primary production of agricultural products. There is one nonvoting member on the board who is the ((~~chair~~)) director of the county extension office or an extension agent appointed by the ((~~chair~~)) director of the county extension office. Each voting member of the board 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 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 the ((~~section [geographical area]~~)) geographical area with last publication occurring at least ten days prior to the nomination. All persons interested in appointment to the board and residing in the geographical area with a pending nomination shall make a written application that includes the signatures of at least ten registered voters residing in the 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 post the names of those nominees in the county courthouse or county web site and publish in at least one newspaper of general circulation in the county. The county legislative authority, within ((~~ten~~)) thirty days of receiving the list of nominees, shall appoint one of those nominees to the county noxious weed control board to represent that geographical area during that term of office. If the county legislative authority fails to appoint a nominee within the thirty-day period, the nominee must be appointed by the county noxious weed control board.

(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 constitutes a quorum for the transaction of business and is necessary for any action taken by the board. The board shall elect from its members a chair and 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 the board is located shall appoint a qualified person to fill the vacancy for the unexpired term~~)), the position must be filled in the manner prescribed in this section.

**Sec.**  RCW 17.10.060 and 1997 c 353 s 7 are each amended to read as follows:

(1) Each activated county noxious weed control board ((~~shall~~)) must employ or otherwise provide a weed coordinator whose duties 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. The weed coordinator may be employed full time, part time, or seasonally by the county noxious weed control board. County weed board employment practices ((~~shall comply~~)) must be consistent with county personnel policies. Within sixty days from initial employment the weed coordinator ((~~shall obtain a pest control consultant license, a pesticide operator license~~)) must obtain licensure consistent with Washington state department of agriculture pesticide license rules, and the necessary endorsements on the licenses as required by law. Each board may purchase, rent, or lease equipment, facilities, or products and may hire 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 has the power to adopt rules and regulations, subject to notice and hearing as provided in chapter((~~s~~)) 42.30 ((~~and 42.32~~)) RCW, 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.**  RCW 17.10.070 and 1998 c 245 s 3 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 has the power to:

(a) Employ a state noxious weed control board executive secretary and educational specialist who are exempt employees, and additional persons as it deems necessary, to disseminate information relating to noxious weeds to county noxious weed control boards and weed districts, 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, or repeal 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~~)) must provide a written report before January 1st of each odd-numbered year to the county noxious weed control boards and the weed districts showing the 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~~)) must include recommendations as to the long-term needs regarding weed control.

**Sec.**  RCW 17.10.074 and 1997 c 353 s 9 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, with the advice of the state noxious weed control board, 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 staff as may be necessary in the administration of this chapter;

(c) Adopt, amend, or repeal 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)~~)).

(2) In addition to the powers conferred on the director under the provisions of this chapter, the director, with the advice of the state noxious weed control board, must:

(a) 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 one hundred registered voters that are land owners 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)~~)) (b) If the complaint in ((~~(e)~~)) (a) 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 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)~~)) (c) In counties 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 [and]~~)), and 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)~~)) (d) 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)~~)) (3) The moneys appropriated for noxious weed control to the department shall be used for administration of the state noxious weed control board, 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)~~)) (4) 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.**  RCW 17.10.100 and 1997 c 353 s 12 are each amended to read as follows:

Where any of the following occur, the state noxious weed control board ((~~may, following~~)) must hold a hearing, then may 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 inclusion from an adjacent county's noxious weed control board or weed district, which the adjacent board or district has included that weed in its county or district list, and the adjacent board or weed district ((~~alleges~~)) documents that its noxious weed control program is being hampered by the failure to include the weed on the county's noxious weed list.

**Sec.**  RCW 17.10.140 and 1997 c 353 s 17 are each amended to read as follows:

(1) Except as is provided under subsection (2) of this section, every owner ((~~shall~~)) must perform or cause to be performed those acts as may be necessary to:

(a) Eradicate all class A noxious weeds;

(b) 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

(c) Control and prevent the spread of all class B and class C noxious weeds listed on the county weed list as locally mandated control priorities within and from the owner's property.

(2) ((~~Forestlands~~)) Every owner of forestlands classified under RCW 17.10.240(2), or meeting the definition of forestlands contained in RCW 17.10.240, ((~~are subject to the requirements of subsection (1)(a) and (b) of this section at all times. Forestlands are subject to the requirements of subsection (1)(c) of this section only within a one thousand foot buffer strip of adjacent land uses. In addition, forestlands are subject to subsection (1)(c) of this section~~)) must perform or cause to be performed those acts as may be necessary to:

(a) Eradicate all class A noxious weeds;

(b) 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

(c) Control and prevent the spread of all class B and class C noxious weeds listed on the county weed list as locally mandated control priorities within and from the owner's property only when encountered:

(i) Within one thousand feet of adjacent land uses;

(ii) Within two hundred feet of all roads unless properly abandoned as defined under WAC 222-24-052 as that section existed as of January 1, 2020, along navigable rivers, gravel pits, log yards, and staging areas; or

(iii) On all the property for a single five-year period following the harvesting of trees for lumber.

**Sec.**  RCW 17.10.145 and 2019 c 353 s 4 are each amended to read as follows:

(1) All state agencies shall control noxious weeds on lands they own, lease, or otherwise control through integrated pest management practices. Agencies ((~~shall~~)) must appoint a liaison to develop plans in cooperation with county noxious weed control boards to control noxious weeds in accordance with standards in this chapter.

(2) All state agencies' lands must comply with this chapter, regardless of noxious weed control efforts on adjacent lands.

(3) In counties with a noxious weed assessment under RCW 17.10.240, whenever state-managed land, state-owned land, or a state right-of-way are within any county weed board jurisdiction, the county treasurer must certify annually and forward to the appropriate state agency for payment a statement showing the amount of the assessment to which the land would be liable if they were in private ownership, separately describing each lot or parcel and, if delinquent, with interest and penalties consistent with RCW 84.56.020.

(4) While conducting planned projects to ensure compliance with this chapter, all agencies must give preference, when deemed appropriate by the acting agency for the project and targeted resource management goals, to replacing noxious weeds with native forage plants that are pollen-rich or nectar-rich and beneficial for all pollinators, including honey bees.

**Sec.**  RCW 17.10.205 and 1997 c 353 s 24 are each amended to read as follows:

Open areas subject to the spread of noxious weeds, including but not limited to subdivisions, school grounds, playgrounds, parks, and rights-of-way shall be subject to regulation ((~~by activated county noxious weed control boards~~)) in the same manner and to the same extent as is provided for all terrestrial and aquatic lands of the state.

**Sec.**  RCW 17.10.235 and 1997 c 353 s 26 are each amended to read as follows:

(1) The director of agriculture shall adopt, with the advice of the state noxious weed control board, rules designating noxious weed seeds 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 the seeds must be controlled and the maximum amount of 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 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 the feed. Rules developed under this section shall identify ways that products, screenings, articles, or feed stuffs containing noxious weed seeds or toxic weeds can be made available for beneficial uses.

(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, county weed board, or weed district, inspect products, screenings, articles, or feed stuffs designated 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.**  RCW 17.10.240 and 1997 c 353 s 27 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~~)) within thirty days prior to the adoption of the county budget. Control of weeds is a benefit to the lands within any such section. Funding for the budget is derived from any or all of the following:

(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 will gather information to serve as a basis for classification and then classify the lands into suitable classifications, including but not limited to dry lands, range lands, irrigated lands, nonuse lands, forestlands, or federal lands. The board shall develop and forward to the county legislative authority, as a proposed level of assessment for each class, an amount as 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 benefits 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 amount of the assessment 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 lien created 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 bear interest at the rate of twelve percent per annum and the interest accrues as of the date notice of the lien is sent to the owner: PROVIDED FURTHER, That any collections for the lien shall not be considered as tax; or

(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.

(2) Forestlands 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 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 (3) of this section.

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

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

(b) The denominator 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 are calculated as being one-half acre in size on the average, and (ii) improved lands 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.

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

**Sec.**  RCW 17.10.890 and 1997 c 353 s 32 are each amended to read as follows:

((~~The following procedures shall be followed to deactivate a county noxious weed control board~~)) A county noxious weed control board may only be deactivated if there are no class A or class B noxious weeds in the county. Upon receiving documentation of the absence of class A and class B noxious weeds, the county legislative authority may initiate the following procedures:

(1) The county legislative authority 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.

**--- END ---**