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SECOND ENGROSSED HOUSE BILL 1743

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State of Washington                      60th Legislature                      2008 Regular Session

By Representatives Kretz, B. Sullivan, Sump, Upthegrove and Linville

Read first time 01/26/2007. Referred to Committee on Agriculture & Natural Resources.

1            AN ACT Relating to noxious weed control boards; amending RCW  
2 17.10.010, 17.10.020, 17.10.030, 17.10.050, 17.10.060, 17.10.074,  
3 17.10.080, 17.10.190, 17.10.205, 17.10.240, 17.10.250, and 17.10.280;  
4 and repealing RCW 17.10.040 and 17.10.890.

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

6            **Sec. 1.** RCW 17.10.010 and 1997 c 353 s 2 are each amended to read  
7 as follows:

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

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

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

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

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

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

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

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

18 (5) As pertains to the duty of an owner, the words "control",  
19 "contain", "eradicate", and the term "prevent the spread of noxious  
20 weeds" means conforming to the standards of noxious weed control or  
21 prevention in this chapter or as adopted by rule in chapter 16-750 WAC  
22 by the state noxious weed control board and (~~an activated~~) a county  
23 noxious weed control board.

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

26 (7) "Agricultural purposes" are those that are intended to provide  
27 for the growth and harvest of food and fiber.

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

30 (9) "Weed district" means a weed district as defined in chapters  
31 17.04 and 17.06 RCW.

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

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

1       **Sec. 2.** RCW 17.10.020 and 1997 c 353 s 3 are each amended to read  
2 as follows:

3       (1) In each county of the state there is created a noxious weed  
4 control board, bearing the name of the county within which it is  
5 located. The jurisdictional boundaries of each board are the  
6 boundaries of the county within which it is located.

7       (2) ~~((Each noxious weed control board is inactive until activated~~  
8 ~~pursuant to the provisions of RCW 17.10.040)) Beginning January 1,~~  
9 ~~2009, and thereafter, each county must have a noxious weed control~~  
10 ~~board in place, appointed in the manner provided in RCW 17.10.050.~~

11       **Sec. 3.** RCW 17.10.030 and 1997 c 353 s 4 are each amended to read  
12 as follows:

13       There is created a state noxious weed control board comprised of  
14 nine voting members and three nonvoting members. Four of the voting  
15 members shall be ~~((elected by the members of the various activated~~  
16 ~~county noxious weed control boards, and shall be residents of a county~~  
17 ~~in which a county noxious weed control board has been activated and a~~  
18 ~~member of said board, and those qualifications shall continue through~~  
19 ~~their term of office)) members of county noxious weed control boards~~  
20 ~~and that qualification must continue through their terms of office.~~  
21 ~~They shall be elected by the members of various county noxious weed~~  
22 ~~control boards under rules adopted by the state noxious weed control~~  
23 ~~board as provided in this section.~~ Two of these members shall be  
24 elected from the west side of the state, the crest of the Cascades  
25 being the dividing line, and two from the east side of the state. The  
26 director of agriculture is a voting member of the board. One voting  
27 member shall be elected by the directors of the various active weed  
28 districts formed under chapter 17.04 or 17.06 RCW. The Washington  
29 state association of counties appoints one voting member who shall be  
30 a member of a county legislative authority. The director shall appoint  
31 two voting members to represent the public interest, one from the west  
32 side and one from the east side of the state. The director shall also  
33 appoint three nonvoting members representing scientific disciplines  
34 relating to weed control. The term of office for all members of the  
35 board is three years from the date of election or appointment.

36       The board, by rule, shall establish a position number for each  
37 elected position of the board and shall designate which county noxious

1 weed control board members are eligible to vote for each elected  
2 position. The elected members serve staggered terms. Elections for  
3 the elected members of the board shall be held thirty days prior to the  
4 expiration date of their respective terms. Nominations and elections  
5 shall be by mail and conducted by the board.

6 The board shall conduct its first meeting within thirty days after  
7 all its members have been elected. The board shall elect from its  
8 members a chair and other officers as may be necessary. A majority of  
9 the voting members of the board constitutes a quorum for the  
10 transaction of business and is necessary for any action taken by the  
11 board. The members of the board serve without salary, but shall be  
12 reimbursed for travel expenses incurred in the performance of their  
13 duties under this chapter in accordance with RCW 43.03.050 and  
14 43.03.060.

15 **Sec. 4.** RCW 17.10.050 and 1997 c 353 s 6 are each amended to read  
16 as follows:

17 (1) Each (~~activated~~) county noxious weed control board consists  
18 of five voting members appointed by the county legislative authority.  
19 In appointing the voting members, the county legislative authority  
20 shall divide the county into five geographical areas that best  
21 represent the county's interests, and appoint a voting member from each  
22 geographical area. At least four of the voting members shall be  
23 engaged in the primary production of agricultural products. There is  
24 one nonvoting member on the board who is the chair of the county  
25 extension office or an extension agent appointed by the chair of the  
26 county extension office. Each voting member of the board serves a term  
27 of four years, except that the county legislative authority shall, when  
28 a board is first (~~activated~~) appointed under this chapter, designate  
29 two voting members to serve terms of two years. The board members  
30 shall not receive a salary but shall be compensated for actual and  
31 necessary expenses incurred in the performance of their official  
32 duties.

33 (2)(a) The voting members of the board serve until their  
34 replacements are appointed. New members of the board shall be  
35 appointed at least thirty days prior to the expiration of any board  
36 member's term of office.

1       **(b)** Notice of expiration of a term of office shall be published at  
2 least twice in a weekly or daily newspaper of general circulation in  
3 the (~~section [geographical area]~~) geographical area with last  
4 publication occurring at least ten days prior to the nomination. All  
5 persons interested in appointment to the board and residing in the  
6 geographical area with a pending nomination shall make a written  
7 application that includes the signatures of at least ten registered  
8 voters residing in the geographical area supporting the nomination to  
9 the county noxious weed control board. After nominations close, the  
10 county noxious weed control board shall, after a hearing, send the  
11 applications to the county legislative authority recommending the names  
12 of the most qualified candidates, and post the names of those nominees  
13 in the county courthouse and publish in at least one newspaper of  
14 general circulation in the county. The county legislative authority,  
15 within ten days of receiving the list of nominees, shall appoint one of  
16 those nominees to the county noxious weed control board to represent  
17 that geographical area during that term of office.

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

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

28       **Sec. 5.** RCW 17.10.060 and 1997 c 353 s 7 are each amended to read  
29 as follows:

30       (1) Each (~~activated~~) county noxious weed control board shall  
31 employ or otherwise provide a weed coordinator whose duties are fixed  
32 by the board but which shall include inspecting land to determine the  
33 presence of noxious weeds, offering technical assistance and education,  
34 and developing a program to achieve compliance with the weed law. The  
35 weed coordinator may be employed full time, part time, or seasonally by  
36 the county noxious weed control board. County weed board employment  
37 practices shall comply with county personnel policies. Within sixty

1 days from initial employment the weed coordinator shall obtain a pest  
2 control consultant license, a pesticide operator license, and the  
3 necessary endorsements on the licenses as required by law. Each board  
4 may purchase, rent, or lease equipment, facilities, or products and may  
5 hire additional persons as it deems necessary for the administration of  
6 the county's noxious weed control program.

7 (2) Each (~~activated~~) county noxious weed control board has the  
8 power to adopt rules and regulations, subject to notice and hearing as  
9 provided in chapters 42.30 and 42.32 RCW, as are necessary for an  
10 effective county weed control or eradication program.

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

13 **Sec. 6.** RCW 17.10.074 and 1997 c 353 s 9 are each amended to read  
14 as follows:

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

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

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

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

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

31 (e) Upon receipt of a complaint signed by a majority of the members  
32 of an adjacent county noxious weed control board or weed district, or  
33 by one hundred registered voters that are land owners within the  
34 county, require the county legislative authority or noxious weed  
35 control board of the county or weed district that is the subject of the  
36 complaint to respond to the complaint within forty-five days with a  
37 plan for the control of the noxious weeds cited in the complaint;

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

13 (g) Until January 1, 2009, in counties without ((an activated)) a  
14 noxious weed control board, enter upon any property as provided for in  
15 RCW 17.10.160, issue or cause to be issued notices and citations and  
16 take the necessary action to control noxious weeds as provided in RCW  
17 17.10.170, hold hearings on any charge or cost of control action taken  
18 as provided for in RCW 17.10.180, issue a notice of civil infraction as  
19 provided for in RCW 17.10.230 and 17.10.310 through ~~((and))~~ and  
20 17.10.350, and place a lien on any property pursuant to RCW 17.10.280,  
21 17.10.290, and 17.10.300 with the same authorities and responsibilities  
22 imposed by these sections on county noxious weed control boards;

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

26 (2) The moneys appropriated for noxious weed control to the  
27 department shall be used for administration of the state noxious weed  
28 control board, the administration of the director's powers under this  
29 chapter, the purchase of materials for controlling, containing, or  
30 eradicating noxious weeds, the purchase or collection of biological  
31 control agents for controlling noxious weeds, and the contracting for  
32 services to carry out the purposes of this chapter. ~~((In a county with  
33 an activated noxious weed control board,))~~ The director shall make  
34 every effort to contract with ~~((that))~~ county noxious weed control  
35 boards for the needed services.

36 (3) If the director determines the need to reallocate funds  
37 previously designated for county use, the director shall convene a

1 meeting of the state noxious weed control board to seek its advice  
2 concerning any reallocation.

3 **Sec. 7.** RCW 17.10.080 and 1997 c 353 s 10 are each amended to read  
4 as follows:

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

7 (2) Any person may request during a comment period established by  
8 the state weed board the inclusion, deletion, or designation change of  
9 any plant to the state noxious weed list.

10 (3) The state noxious weed control board shall send a copy of the  
11 list to each ((activated)) county noxious weed control board((7)) and  
12 to each weed district((, and to the county legislative authority of  
13 each county with an inactive noxious weed control board)).

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

17 **Sec. 8.** RCW 17.10.190 and 1997 c 353 s 23 are each amended to read  
18 as follows:

19 Each ((activated)) county noxious weed control board must publish  
20 annually, and at other times as may be appropriate, in at least one  
21 newspaper of general circulation within its area, a general notice.  
22 The notice shall direct attention to the need for noxious weed control  
23 and give other information concerning noxious weed control requirements  
24 as may be appropriate, or indicate where such information may be  
25 secured. In addition to the general notice required, the county  
26 noxious weed control board may use any appropriate media for the  
27 dissemination of information to the public as may be calculated to  
28 bring the need for noxious weed control to the attention of owners.  
29 The board may consult with individual owners concerning their problems  
30 of noxious weed control and may provide them with information and  
31 advice, including giving specific instructions and methods when and how  
32 certain named weeds are to be controlled. The methods may include some  
33 combination of physical, mechanical, cultural, chemical, and/or  
34 biological methods, including livestock. Publication of a notice as  
35 required by this section is not a condition precedent to the  
36 enforcement of this chapter.



1       **Sec. 9.** RCW 17.10.205 and 1997 c 353 s 24 are each amended to read  
2 as follows:

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

8       **Sec. 10.** RCW 17.10.240 and 1997 c 353 s 27 are each amended to  
9 read as follows:

10       (1) (~~(The activated)~~) Each county noxious weed control board (~~(of~~  
11 ~~each county)~~) shall annually submit a budget to the county legislative  
12 authority for the operating cost of the county's weed program for the  
13 ensuing fiscal year(~~(: PROVIDED, That if the board finds the budget~~  
14 ~~approved by the legislative authority is insufficient for an effective~~  
15 ~~county noxious weed control program it shall petition the county~~  
16 ~~legislative authority to hold a hearing as provided in RCW 17.10.890)~~).

17 Control of weeds is a benefit to the lands within any such section.  
18 Funding for the budget is derived from any or all of the following:

19       (a) The county legislative authority may, in lieu of a tax, levy an  
20 assessment against the land for this purpose. Prior to the levying of  
21 an assessment the county noxious weed control board shall hold a public  
22 hearing at which it will gather information to serve as a basis for  
23 classification and then classify the lands into suitable  
24 classifications, including but not limited to dry lands, range lands,  
25 irrigated lands, nonuse lands, forest lands, or federal lands. The  
26 board shall develop and forward to the county legislative authority, as  
27 a proposed level of assessment for each class, an amount as seems just.  
28 The assessment rate shall be either uniform per acre in its respective  
29 class or a flat rate per parcel rate plus a uniform rate per acre:  
30 PROVIDED, That if no benefits are found to accrue to a class of land,  
31 a zero assessment may be levied. The county legislative authority,  
32 upon receipt of the proposed levels of assessment from the board, after  
33 a hearing, shall accept or modify by resolution, or refer back to the  
34 board for its reconsideration all or any portion of the proposed levels  
35 of assessment. The amount of the assessment constitutes a lien against  
36 the property. The county legislative authority may by resolution or  
37 ordinance require that notice of the lien be sent to each owner of

1 property for which the assessment has not been paid by the date it was  
2 due and that each lien created be collected by the treasurer in the  
3 same manner as delinquent real property tax, if within thirty days from  
4 the date the owner is sent notice of the lien, including the amount  
5 thereof, the lien remains unpaid and an appeal has not been made  
6 pursuant to RCW 17.10.180. Liens treated as delinquent taxes bear  
7 interest at the rate of twelve percent per annum and the interest  
8 accrues as of the date notice of the lien is sent to the owner:  
9 PROVIDED FURTHER, That any collections for the lien shall not be  
10 considered as tax; or

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

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

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

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

33 (b) The denominator is the total acreage from which funds in (a) of  
34 this subsection are collected. For lands of less than one acre in  
35 size, the denominator calculation may be based on the following  
36 assumptions: (i) Unimproved lands are calculated as being one-half  
37 acre in size on the average, and (ii) improved lands are calculated as  
38 being one-third acre in size on the average. The county legislative

1 authority may choose to calculate the denominator for lands of less  
2 than one acre in size using other assumptions about average parcel size  
3 based on local information.

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

8 **Sec. 11.** RCW 17.10.250 and 1997 c 353 s 28 are each amended to  
9 read as follows:

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

19 **Sec. 12.** RCW 17.10.280 and 1987 c 438 s 35 are each amended to  
20 read as follows:

21 Every (~~activated~~) county noxious weed control board performing  
22 labor, furnishing material, or renting, leasing or otherwise supplying  
23 equipment, to be used in the control of noxious weeds, or in causing  
24 control of noxious weeds, upon any property pursuant to the provisions  
25 of chapter 17.10 RCW has a lien upon such property for the labor  
26 performed, material furnished, or equipment supplied whether performed,  
27 furnished, or supplied with the consent of the owner, or his agent, of  
28 such property, or without the consent of said owner or agent.

29 NEW SECTION. **Sec. 13.** The following acts or parts of acts are  
30 each repealed:

31 (1) RCW 17.10.040 (Activation of inactive county noxious weed  
32 control board) and 1997 c 353 s 5, 1987 c 438 s 3, 1975 1st ex.s. c 13  
33 s 2, & 1969 ex.s. c 113 s 4; and

1           (2) RCW 17.10.890 (Deactivation of county noxious weed control  
2 board--Hearing) and 1997 c 353 s 32 & 1987 c 438 s 37.

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