

APPENDIX A

TITLE 35

AGRICULTURE

ARTICLE 5.5

Colorado Noxious Weed Act

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35-5.5-101. Short title. This article shall be known and may be cited as the "Colorado Noxious Weed Act".

35-5.5-102. Legislative declaration - rule of construction. (1) In enacting this article the general assembly finds and declares that there is a need to ensure that all the lands of the state of Colorado, whether in private or public ownership, are protected by and subject to the jurisdiction of a local government empowered to manage undesirable plants as designated by the state of Colorado and the local governing body. In making such determination the general assembly hereby finds and declares that certain undesirable plants constitute a present threat to the continued economic and environmental value of the lands of the state and if present in any area of the state must be managed. It is the intent of the general assembly that the advisory commissions appointed by counties and municipalities under this article, in developing undesirable plant management plans, consider the elements of integrated management as defined in this article, as well as all appropriate and available control and management methods, seeking those methods

which are least environmentally damaging and which are practical and economically reasonable.

(1.5) The general assembly hereby finds and declares that:

- (a) Noxious weeds have become a threat to the natural resources of Colorado, as thousands of acres of crop, rangeland, and habitat for wildlife and native plant communities are being destroyed by noxious weeds each year;
- (b) An organized and coordinated effort must be made to stop the spread of noxious weeds and that such an effort can best be facilitated by a state coordinator who will assist in building local coalitions and coordinate the efforts of state, federal, local, and private landowners in developing plans for the control of noxious weeds without unnecessarily disrupting the development of such lands;
- (c) The designation and classification of noxious weeds into categories for immediate eradication, containment, and suppression will further assist the state in coordinating efforts to stop the spread of noxious weeds;
- (d) Because the spread of noxious weeds can largely be attributed to the movement of seed and plant parts on motor vehicles, and because noxious weeds are becoming an increasing maintenance problem on highway right-of-ways in this state, additional resources are needed to fight the spread of noxious weeds; and
- (e) The use of moneys in the noxious weed management fund to assist local governing bodies and affected landowners in the eradication, containment, or suppression of noxious weeds best serves the citizens of Colorado.

(2) This article is in addition to article 5 of this title and is intended to be an expansion of, not a substitution for, the provisions of said article 5.

35-5.5-103. Definitions. As used in this article, unless the context otherwise requires:

- (3) "Alien plant" means a plant species that is not indigenous to the state of Colorado.
- (4) "Commissioner" means the commissioner of the department of agriculture or his or her designee.
- (5) "Department" means the department of agriculture.
- (6) "District" means a local governing body's geographic description of a land area where noxious weeds are to be managed.
- (7) "Federal agency" means each agency, bureau, or department of the federal government responsible for administering or managing federal land.
- (8) "Federal land manager" means the federal agency having jurisdiction over any federal lands affected by the provisions of this article.
- (9) "Integrated management" means the planning and implementation of a coordinated program utilizing a variety of methods for managing noxious weeds, the purpose of which is to achieve specified management objectives and promote desirable plant communities. Such methods may include but are not limited to education, preventive measures, good stewardship, and the following techniques:
 - (a) "Biological management", which means the use of an organism to disrupt the growth of noxious weeds.
 - (b) "Chemical management", which means the use of herbicides or plant growth regulators to disrupt the growth of noxious weeds.
 - (c) "Cultural management", which means methodologies or management practices that

favor the growth of desirable plants over noxious weeds, including maintaining an optimum fertility and plant moisture status in an area, planting at optimum density and spatial arrangement in an area, and planting species most suited to an area.

(d) "Mechanical management", which means methodologies or management practices that physically disrupts plant growth, including tilling, mowing, burning, flooding, mulching, and hand-pulling, hoeing, and grazing.

(10) "Landowner" means any owner of record of federal, tribal, state, county, municipal, or private land.

(10.5) "Local advisory board" means those individuals appointed by the local governing body to advise on matters of noxious weed management.

(11) "Local governing body" means the board of county commissioners of a county, the city council of a city and county or statutory or home rule city, the board of trustees of a statutory town or home rule town, or the board of selectmen or city council of a territorial charter municipality, as the context so requires.

(11.4) "Local noxious weed" means any plant of local importance that has been declared a noxious weed by the local governing body.

(11.6) "Management" means any activity that prevents a plant from establishing, reproducing, or dispersing itself.

(11.7) "Management objective" means the specific, desired result of integrated management efforts and includes:

(a) "Eradication" which means reducing the reproductive success of a noxious weed species or specified noxious weed population in largely uninfested regions to zero and permanently eliminating the species or population within a specified period of time. Once all specified weed populations are eliminated or prevented from reproducing, intensive efforts continue until the existing seed bank is exhausted.

(b) "Containment" which means maintaining an intensively managed buffer zone that separates infested regions, where suppression activities prevail, from largely uninfested regions, where eradication activities prevail.

(c) "Suppression" which means reducing the vigor of noxious weeds populations within an infested region, decreasing the propensity of noxious weed species to spread to surrounding lands, and mitigating the negative effects of noxious weed populations on infested lands.

Suppression efforts may employ a wide variety of integrated management techniques.

(d) "Restoration" which means the removal of noxious weeds species and reestablishment of desirable plant communities on lands of significant environmental or agricultural value in order to help restore or maintain said value.

(12) "Management plan" means the noxious weed management plan developed by any person or the local advisory board using integrated management.

(14) "Municipality" has the meaning set forth in section 31-1-101 (6), C.R.S.

(15) "Native plant" means a plant species that is indigenous to the state of Colorado.

(16) "Noxious weed" means an alien plant or parts of an alien plant that have been designated by rule as being noxious or has been declared a noxious weed by a local advisory board, and meets one or more of the following criteria:

(a) Aggressively invades or is detrimental to economic crops or native plant communities;

(b) Is poisonous to livestock;

(c) Is a carrier of detrimental insects, diseases, or parasites;

(d) The direct or indirect effect of the presence of this plant is detrimental to the environmentally sound management of natural or agricultural ecosystems.

(16.2) "Noxious weed management" means the planning and implementation of an integrated program to manage noxious weed species.

(17) "Person" or "occupant" means an individual, partnership, corporation, association, or federal, state, or local government or agency thereof owning, occupying, or controlling any land, easement, or right-of-way, including any city, county, state, or federally owned and controlled highway, drainage or irrigation ditch, spoil bank, borrow pit, gas and oil pipeline, high voltage electrical transmission line, or right-of-way for a canal or lateral.

(18) "Plant growth regulator" means a substance used for controlling or modifying plant growth processes without appreciable phytotoxic effect at the dosage applied.

(18.5) "State noxious weed" means any noxious weed identified by the commissioner by rule after notifying and consulting with the state noxious weed advisory committee created in section 35-5.5-108.7.

(18.6) "State weed coordinator" means the state weed coordinator under contract with or appointed by the commissioner pursuant to section 35-5.5-117.

(21) "Weed" means any undesirable plant.

35-5.5-104. Duty to manage noxious weeds. It is the duty of all persons to use integrated methods to manage noxious weeds if the same are likely to be materially damaging to the land of neighboring landowners.

35-5.5-104.5. Intentional introduction, cultivation, or sale of noxious weeds - costs.

(1)(a) It shall be unlawful to intentionally introduce, cultivate, sell, offer for sale, or knowingly allow to grow in violation of this article or any rule promulgated hereunder in this state any noxious weed designated pursuant to section 35-5.5-108 (2)(a); except that this prohibition shall not apply to:

(I) Research sanctioned by a state or federal agency or an accredited university or college;

(II) Activities specifically permitted by the commissioner;

(III) Noxious weed management plans that are part of an approved reclamation plan pursuant to section 34-32-116 (7) or 34-32.5-116 (4), C.R.S.;

(IV) Noxious weed management activities that are conducted on disturbed lands as part of an approved reclamation plan pursuant to section 34-33-111 (1), C.R.S.; or

(V) Noxious weed management activities that are part of activities conducted on disturbed lands pursuant to section 34-60-106 (12), C.R.S.

(b) It shall not be a violation of this section for a person to knowingly allow to grow a state noxious weed that is being properly managed in accordance with the rules promulgated by the commissioner.

(2) Any entity or person that violates the provisions of this section shall be responsible for the costs associated with remediation of the noxious weeds. In assessing the cost of remediation, the commissioner may include both actual immediate and estimated future costs to achieve specified management objectives.

35-5.5-105. Noxious weed management - powers of county commissioners. (1) The board of county commissioners of each county in the state shall adopt a noxious weed management plan for all of the unincorporated lands within the county. Such plan shall include all of the requirements and duties imposed by this article. Guidelines may be included that address no pesticide noxious weed management plans. In addition to and not in limitation of the powers delegated to boards of county commissioners in section 30-11-107 and article 15 of title 30, C.R.S., article 5 of this title, and elsewhere as provided by law, the board of county commissioners may adopt and provide for the enforcement of such ordinances, resolutions, rules, and other regulations as may be necessary and proper to enforce said plan and otherwise provide for the management of noxious weeds within the county, subject to the following limitation: No county ordinance, rule, resolution, other regulation, or exercise of power pursuant to this article shall apply within the corporate limits of any incorporated municipality, nor to any municipal service, function, facility, or property, whether owned by or leased to the incorporated municipality outside the municipal boundaries unless the county and municipality agree otherwise pursuant to part 2 of article 1 of title 29, C.R.S., or article 20 of title 29, C.R.S.

(2) The board of county commissioners shall provide for the administration of the noxious weed management plan authorized by this article through the use of agents, delegates, or employees and may hire additional staff or provide for the performance of all or part of the management plan through outside contract. Any agent, delegate, employee, staff, or contractor applying or recommending the use of chemical management methods shall be certified by the department of agriculture for such application or recommendation. Costs associated with the administration of the noxious weed management plan shall be paid from the noxious weed management fund of each county.

(3) The board of county commissioners may cooperate with other counties and municipalities for the exercise of any or all of the powers and authorities granted by this article. Such cooperation shall take the form of an intergovernmental agreement pursuant to part 2 of article 1 of title 29, C.R.S., or article 20 of title 29, C.R.S.

35-5.5-106. Noxious weed management - municipal authority. (1) The governing body of each municipality in the state shall adopt a noxious weed management plan for all lands within the territorial limits of the municipality. In addition to and independent of the powers elsewhere delegated by law, the governing body of a municipality may adopt and provide for the enforcement of such ordinances, resolutions, rules, and other regulations as may be necessary and proper to enforce said plan and otherwise provide for the management of noxious weeds within the municipality, subject to the following limitation: No municipal ordinance, resolution, rule, other regulation, or exercise of power pursuant to this article shall apply to unincorporated lands or facilities outside the corporate limits of the municipality, except such lands or facilities which are owned by or leased to the municipality, unless the municipality and the county otherwise agree pursuant to part 2 of article 1 of title 29, C.R.S., or article 20 of title 29, C.R.S.

(2) The governing body of the municipality shall provide for the administration of the noxious weed management plan authorized by this article through the use of agents, delegates, or employees and may hire additional staff or provide for the performance of

all or part of the noxious weed management plan through outside contract. Any agent, delegate, employee, staff, or contractor applying or recommending the use of chemical management methods shall be certified by the department of agriculture for such application or recommendation.

(3) The governing body may cooperate with counties and other municipalities for the exercise of any or all of the powers and authorities granted by this article. Such cooperation shall take the form of an intergovernmental agreement pursuant to part 2 of article 1 of title 29, C.R.S., or article 20 of title 29, C.R.S.

(4) To the degree that a municipality has, upon enactment of this article, or subsequent to that date, adopted an ordinance or ordinances for the management of noxious weeds, the adoption of such an ordinance or ordinances shall be deemed to satisfy the requirement for the adoption of a noxious weed management plan imposed by this article.

35-5.5-107. Local advisory board - formation - duties. (1) The governing body of each county and municipality shall appoint a local advisory board. The local governing body, at its sole option, may appoint itself, or a commission of landowners, to act as the local advisory board for that jurisdiction. The members of each local advisory board shall be residents of the unincorporated portion of the county or residents of the municipality, as the case may be, and in the case of a county, at least a majority of the members of the local advisory board shall be landowners of over forty acres.

(2) In the event a county or municipality elects to cooperate with another county or municipality for any of the purposes set forth in this article, the membership of the local advisory board shall be determined by the governing bodies of such cooperating local governments.

(3) Each local advisory board shall annually elect a chairman and secretary. A majority of the members of the board shall constitute a quorum for the conduct of business.

(4) Local advisory boards shall have the power and duty to:

(a) Develop a recommended management plan for the integrated management of designated noxious weeds and recommended management criteria for noxious weeds within the area governed by the local government or governments appointing the local advisory board. The management plan shall be reviewed at regular intervals but not less often than once every three years by the local advisory board. The management plan and any amendments made thereto shall be transmitted to the local governing body for approval, modification, or rejection.

(b) Declare noxious weeds and any state noxious weeds designated by rule to be subject to integrated management.

(c) Recommend to the local governing body that identified landowners are required to submit an individual integrated management plan to manage noxious weeds on their property.

(5) The local governing body shall have the sole and final authority to approve, modify, or reject the management plan, management criteria, management practice, and any other decision or recommendation of the local advisory board.

(6) The state weed coordinator shall review any recommendations of a local advisory board appointed pursuant to article 5 of this title and note any inconsistencies between the recommendations of the state weed coordinator or the commissioner and any such local advisory board.

35-5.5-108. Designated noxious weeds - legislative declaration. (1) The general assembly hereby finds and declares that the noxious weeds designated by rule are a present threat to the economic and environmental value of the lands of the state of Colorado and declare it to be a matter of statewide importance that the governing bodies of counties and municipalities include plans to manage such weeds as part of their duties pursuant to this article.

(2)(a) The state list of plant species that are designated as noxious weeds shall be designated by rule and shall be managed under the provisions of this article. On and after August 6, 2003, the commissioner shall classify noxious weeds into one of a minimum of three categories, including:

(I) "List A", which means rare noxious weed species that are subject to eradication wherever detected statewide in order to protect neighboring lands and the state as a whole;

(II) "List B", which means noxious weed species with discrete statewide distributions that is subject to eradication, containment, or suppression in portions of the state designated by the commissioner in order to stop the continued spread of these species;

(III) "List C", which means widespread and well-established noxious weed species for which control is recommended but not required by the state, although local governing bodies may require management.

(b) A local governing body may adopt eradication, containment, or suppression standards that is more stringent than the standards adopted by the commissioner.

(2.1) The commissioner shall review and revise, as necessary, the state noxious weed list at least once every three years.

(2.3) The commissioner shall develop and implement by rule state noxious weed management plans for noxious weed species classified as list A or list B species. For each noxious weed species, each management plan shall designate the management objectives for all lands of the state appropriate to achieve the stated purpose of the species classification.

(2.5) The commissioner shall prescribe integrated management techniques to achieve specified management objectives for each listed species after consulting with the state noxious weed advisory committee. The prescribed management techniques shall be mandatory techniques for list A species and populations of list B species designated for eradication. The commissioner shall develop management techniques pursuant to science-based methodologies, peer reviewed studies, or any other method that is based on credible research.

(2.6) The classifications made pursuant to paragraph (a) of subsection (2) of this section shall primarily reflect the known distribution of the designated species, the feasibility of current control technologies to achieve specified management objectives, and the costs of carrying out the prescribed state weed management plan.

(2.7)(a) The commissioner shall also adopt rules for granting compliance waivers to local governing bodies and landowners; except that a waiver may not be granted to the affected landowner when a landowner has willfully or wantonly violated the provisions of this section or section 35-5.5-104.5 or 35-5.5-108.5 or attempts to delay eradication of a species without just cause.

(b) Such rules shall include:

(I) A process by which a local governing body or an affected landowner may petition the

commissioner to change the management objectives specified in a state noxious weed management plan;

(II) The criteria used to evaluate such petitions; and

(III) Time frames in which the commissioner shall grant or deny such petitions.

(c) Actions sufficient to implement the management objective for a noxious weed species shall continue until the commissioner grants a waiver pursuant to this subsection (2.7).

(3) The board of county commissioners or governing body of a municipality may declare additional noxious weeds, within its jurisdictional boundaries, after a public hearing with thirty days prior notice to the public. Any declaration of additional noxious weeds pursuant to this subsection

(3) shall include the management objectives for all affected landowners.

35-5.5-108.5. Responsibilities related to eradication of designated noxious weeds - commissioner - local governing bodies - affected landowners. (1) This section shall apply to noxious weeds that have been classified as list A species and to populations of list B species designated for eradication pursuant to section 35-5.5-108 (2)(a). This section shall govern the responsibilities of the commissioner, local governing bodies, and affected landowners.

(2) **Duties of commissioner.** (a) The commissioner may enforce the provisions of this section as necessary to ensure the cooperation of local governing bodies and affected landowners.

(b) The commissioner shall provide:

(I) Educational resources to local governing bodies and affected landowners regarding the eradication of list A species and populations of list B species designated for eradication. Such education shall include an explanation of why the species has been listed for eradication, the prescribed techniques for eradication in the most cost-effective manner, and the duties of the local governing body and affected landowner regarding such eradication.

(II) Financial or in-kind resources to local governing bodies or affected landowners to eradicate list A species and populations of list B species designated for eradication from the available moneys in the noxious weed management fund created in section 35-5.5-116. Such financial or in-kind resource allocation shall be determined by the commissioner according to the identified benefits to the citizens of Colorado, the surrounding community, and the affected landowners.

(III) The inventory and mapping infrastructure necessary to facilitate the classification of state noxious weeds and the development and implementation of state noxious weed management plans.

(3) **Duties of local governing bodies.** (a) In compliance with the rules promulgated by the commissioner, a local governing body shall initiate and maintain communications with landowners who are affected by list A species and populations of list B species designated for eradication by the commissioner.

(b) In addition to the existing powers and duties of a local governing body provided in this article a local governing body shall:

(I) Provide affected land owners with technical assistance for the eradication of list A species and populations of list B species designated for eradication by the commissioner;

(II) Carry out sufficient measures, including project oversight and enforcement, as may be necessary to ensure the eradication of list A species and populations of list B species designated for eradication by the commissioner;

(III) Provide the commissioner with assistance in disseminating financial resources to affected landowners and mapping data pursuant to rules promulgated by the commissioner; and

(IV) Determine the cost of eradication to be borne by affected landowners.

(c) Local governing bodies may apply to the commissioner for a waiver of compliance with an eradication designation pursuant to section 35-5.5-108 (2.7).

(d) If the commissioner determines, in consultation with the local governing body, that the most cost-effective manner to eradicate designated noxious weeds is for the commissioner to implement an eradication program, the commissioner may implement the eradication program directly.

(4) **Duties of affected landowners or occupants.** Except as provided pursuant to section 35-5.5-104.5 (1)(a), an affected landowner or occupant whose property may be affected by list A species or by populations of list B species designated for eradication shall allow the commissioner or local weed control officials access to such property for the purpose of immediate inspection and eradication when at least one of the following events has occurred:

(a) The affected landowner or occupant has requested the inspection;

(b) A neighboring landowner or occupant has reported a suspected noxious weed infestation and requested an inspection; or

(c) An authorized agent of the local government or commissioner has made a visual observation from a public right-of-way or area and has reason to believe that a noxious weed infestation exists.

(5)(a) If verbal permission to inspect the land by the affected landowner is not obtained, no entry upon any premises, lands, or places shall be permitted until the local governing body has notified the affected landowner that such inspection is pending by certified mail if the landowner's mailing address is within the United States or mailed in a comparable manner to a landowner whose mailing address is outside of the United States. Where possible, inspections shall be scheduled and conducted with the concurrence of the affected landowner or occupant. A local governing body may notify an affected landowner in an electronic format, in addition to notice by certified mail.

(b)(I) If, after ten days with no response from the affected landowner or upon denial of access before the expiration of ten days, the inspector may seek an inspection warrant issued by a municipal, county, or district court having jurisdiction over the land. The court shall issue an inspection warrant upon presentation by the local governing body of an affidavit stating:

(A) The information that gives the inspector reasonable cause to believe that any provision of this section, section 35-5.5-104.5, or section 35-5.5-108, is being or has been violated;

(B) The affected landowner has failed to respond or the landowner or occupant has denied access to the inspector; and

(C) A general description of the location of the affected land.

(II) No affected landowner or occupant shall deny access to an authorized agent of the local governing body or the commissioner in possession of an inspection warrant.

- (6) An affected landowner shall notify a lessee or occupant of affected lands of all notices of inspection and eradication efforts on such lands as soon as practicable.
- (7) The local governing body of the county or municipality having jurisdiction over private and public lands on which list A species or populations of list B species designated for eradication are found shall notify the affected landowner or occupant of such lands by certified mail if the landowner's mailing address is within the United States or mailed in a comparable manner to a landowner whose mailing address is outside of the United States. The notice shall name the noxious weeds, identify eradication as the required management objective, advise the affected landowner or occupant to commence eradication efforts within a specified period or condition, and state the integrated weed management techniques prescribed by the commissioner for eradication. Where possible, the local governing body shall consult with the affected landowner or occupant in the development of a plan for the eradication of noxious weeds on the premises or land.
- (8) Within five days after the local governing body mails notification, the landowner shall comply with the terms of the notification or submit an acceptable plan and schedule for the completion of the management objective.
- (9)(a) In the event the affected landowner or occupant fails to comply with the notice to eradicate the identified noxious weeds and implement an appropriate eradication program, the local governing body having authority over the public or private land shall:
- (I) Provide for and complete the eradication of such noxious weeds at such time, upon such notice, and in such manner consistent with achieving the management objective as the local governing body deems appropriate; and
- (II) Do one of the following:
- (A) Assess the whole cost of the eradication, including up to one hundred percent of inspection, eradication, and other incidental costs in connection with eradication, upon the lot or tract of land where the noxious weeds are located; except that no local governing body shall levy a tax lien against land it administers as a part of a public right-of-way. Such assessment shall be a lien against each lot or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments. Such assessment may be certified to the county treasurer of the county in which the property is located and collected and paid over in the same manner as provided for the collection of taxes. Any funds collected pursuant to this section shall be utilized in furtherance of the local governing body's weed management efforts.
- (B) In the event the state board, department, or agency fails to comply with the notice to eradicate the identified noxious weeds, the local governing body in whose jurisdiction the infestation is located may enter upon such lands and undertake the management of such noxious weeds or cause the same to be done. The expenses associated with inspection and eradication shall be paid by the state board, department, or agency that has jurisdiction over the lands. An agreement for reimbursement shall be reached within two weeks after the date such statement of expense for eradication is submitted by the local governing body. Such reimbursement agreement shall be in writing. If no reimbursement agreement has been reached or the amount reflected in the agreement is not paid upon presentation, the amount in the agreement shall be submitted to the state controller, who shall treat such amount as an encumbrance on the budget of the state board, department, or agency involved or such charge may be recovered in any court with jurisdiction over

such lands. The expense associated with eradication may be recovered in any court with jurisdiction over such infested land.

(b) No local governing body shall provide for or compel the eradication of list A species and populations of list B species designated for eradication or list B noxious weeds on private or public property pursuant to this subsection

(9) without first applying the same measures to any land or rights-of-way owned or administered by the local governing body that are adjacent to the property.

(10) The local governing body, through its delegates, agents, or employees, shall have the right to enter upon any premises, lands, or places during reasonable business hours for the purpose of ensuring compliance with the requirements of this section concerning noxious weed eradication.

(11) No agent, employee, or delegate of a local governing body shall have a cause of action against an affected landowner or occupant for personal injury or property damages while on private or public land for purposes of eradication of noxious weeds except when such damages were the result of gross negligence, recklessness, or intentional action by the landowner.

(12) If, in the opinion of the commissioner, any local governing body fails to adequately perform any of the duties set forth in this section, the commissioner is authorized to conduct any of the functions or duties of a local governing body pursuant to this section.

(13) The commissioner or the local governing body may require the affected landowner to pay a portion of the costs associated with eradication of the noxious weeds.

(14) An affected landowner may apply to the commissioner for a waiver of compliance with an eradication designation pursuant to section 35-5.5-108 (2.7).

(15) For the purposes of this section, an "occupant" shall not include the owner of an easement or right-of-way.

35-5.5-108.7. State noxious weed advisory committee - repeal. (1)(a) There is hereby created the state noxious weed advisory committee, referred to in this section as the "state advisory committee". The state advisory committee shall consist of fifteen members. Such members shall be appointed by the commissioner and shall serve without per diem compensation or expenses. Of the fifteen members, at least one member shall represent private and public landowners or land managers; at least two members shall represent weed management professionals from the federal, state, or local levels; at least one member shall represent public or private weed scientists; at least two members shall represent local governing bodies; four members shall be agricultural producers, as defined in section 35-1-102; and at least three members shall represent knowledgeable resource specialists or industries, including, but not limited to, environmental organizations. Representation on the state advisory committee shall reflect the different geographic areas of the state equally, to the greatest extent possible. Members of the state advisory committee that represents the various stakeholders and regions shall solicit input from similar stakeholders within each member's area of expertise and region of the state. Members of the state advisory committee shall communicate the committee's recommendations to the region and stakeholders represented by each member.

(b) Staggered appointments shall be made so that not more than eight members' terms expire in any one year, and thereafter appointments shall be for terms of two years each.

Appointees shall be limited to two full terms each. Each state advisory committee member shall hold office until the expiration of the term for which such member is appointed or until a successor has been duly appointed.

(c) In the event of a vacancy on the state advisory committee, the commissioner shall fill such vacancy promptly to allow a quorum of the state advisory committee to function.

(d) The commissioner may remove any member of the state advisory committee for misconduct, incompetence, or neglect of duty.

(e) A quorum of the state advisory committee shall elect or appoint annually a chairman and a vice-chairman.

(f) A quorum of the state advisory committee shall be a majority of the members appointed to the state advisory committee.

(g) The state advisory committee shall meet at least quarterly.

(2) The state advisory committee shall make recommendations to the commissioner concerning the:

(a) Designation of state noxious weeds;

(b) Classification of state noxious weeds;

(c) Development and implementation of state weed management plans; and

(d) Prescribed techniques for eradication, containment, and suppression of state noxious weeds.

(3) Recommendations of the state advisory committee shall be made by a majority vote of the members of the state advisory committee.

(4) The state advisory committee shall periodically assess the progress made to implement the provisions of sections 35-5.5-104.5, 35-5.5-108.5, 35-5.5-108.7, and 35-5.5-108

(2)(a); measure the results and effectiveness of endeavors to eradicate, contain, and suppress noxious weeds within this state; and recommend to the commissioner ways to enhance statewide efforts to stop the spread of noxious weeds.

(5) This section is repealed, effective July 1, 2013.

35-5.5-109. Private lands - management of noxious weeds - charges. (1) The local governing body, through its delegates, agents, and employees, shall have the right to enter upon any premises, lands, or places, whether public or private, during reasonable business hours for the purpose of inspecting for the existence of noxious weed infestations, when at least one of the following circumstances has occurred:

(a) The landowner or occupant has requested an inspection;

(b) A neighboring landowner or occupant has reported a suspected noxious weed infestation and requested an inspection; or

(c) An authorized agent of the local government has made a visual observation from a public right-of-way or area and has reason to believe that a noxious weed infestation exists.

(2)(a) No entry upon any premises, lands, or places shall be permitted until the landowner or occupant has been notified by certified mail that such inspection is pending. Where possible, inspections shall be scheduled and conducted with the concurrence of the landowner or occupant.

(b) If after receiving notice that an inspection is pending the landowner or occupant

denies access to the inspector of the local governing body, the inspector may seek an inspection warrant issued by a municipal, county, or district court having jurisdiction over the land. The court shall issue an inspection warrant upon presentation by the local governing body, through its agent or employee, of an affidavit stating: The information which gives the inspector reasonable cause to believe that any provision of this article is being or has been violated; that the occupant or landowner has denied access to the inspector; and a general description of the location of the affected land. No landowner or occupant shall deny access to such land when presented with an inspection warrant.

(3) The local governing body of the county or municipality having jurisdiction over private lands upon which noxious weeds are found shall have the authority, acting directly or indirectly through its agent or staff, to notify the landowner or occupant of such lands, advising the landowner or occupant of the presence of noxious weeds. Said notice shall name the noxious weeds, advise the landowner or occupant to manage the noxious weeds, and specify the best available control methods of integrated management. Where possible, the local governing body shall consult with the affected landowner or occupant in the development of a plan for the management of noxious weeds on the premises or lands.

(4)(a) Within a reasonable time after receipt of notification, which at no time shall exceed ten days, the landowner or occupant shall either:

(I) Comply with the terms of the notification;

(II) Acknowledge the terms of the notification and submit an acceptable plan and schedule for the completion of the plan for compliance; or

(III) Request an arbitration panel to determine the final management plan.

(b) The arbitration panel selected by the local governing body shall be comprised of a weed management specialist or weed scientist, a landowner of similar land in the same county, and a third panel member chosen by agreement of the first two panel members. The landowner or occupant shall be entitled to challenge any one member of the panel, and the local governing body shall name a new panel member from the same category. The decision of the arbitration panel shall be final.

(5)(a) In the event the landowner or occupant fails to comply with the notice to manage the identified noxious weeds or implement the plan developed by the arbitration panel, the local governing body has the authority to:

(I) Provide for and compel the management of such noxious weeds at such time, upon such notice, and in such manner as the local governing body shall prescribe by ordinance or resolution; and

(II) Assess the whole cost thereof, including up to twenty percent for inspection and other incidental costs in connection therewith, upon the lot or tract of land where the noxious weeds are located; except that no local governing body shall levy a tax lien against land it administers as part of a public right-of-way. Such assessment shall be a lien against each lot or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments. Such assessment may be certified to the county treasurer of the county in which the property is located and collected and paid over in the same manner as provided for the collection of taxes. Any funds collected pursuant to this section shall be deposited in the local governing body's weed fund or any similar fund.

(b) No local governing body shall provide for or compel the management of noxious

weeds on private property pursuant to this subsection

(5) without first applying the same or greater management measures to any land or rights-of-way owned or administered by the local governing body that are adjacent to the private property.

(c) No local governing body shall assess the cost of providing for or compelling the management of noxious weeds on private property until the level of management called for in the notice or the management plan developed by the arbitration panel has been successfully achieved.

(6) The local governing body, through its delegates, agents, and employees, shall have the right to enter upon any premises, lands, or places, whether public or private, during reasonable business hours for the purpose of ensuring compliance with the requirements of this article concerning noxious weed management and any other local requirements.

(7) No agent, employee, or delegate of a local governing body shall have a civil cause of action against a landowner or occupant for personal injury or property damage incurred while on public or private land for purposes consistent with this article except when such damages were willfully or deliberately caused by the landowner.

35-5.5-110. Public lands - control of undesirable plants - charges. (1) It is the duty of each state board, department, or agency that administers or supervises state lands to manage noxious weeds on any lands under its jurisdiction using the methods prescribed by the local governing body in whose jurisdiction such state lands are located. The local governing body may give notice to any such state board, department, or agency advising of the presence of noxious weeds and naming them. Such notice shall specify the best available methods of integrated management that are not in conflict with federal law or contractual restrictions included in federal land conveyances to the state. Wherever possible, the local governing body shall consult with the affected state board, department, or agency in the development of a plan for the management of noxious weeds on the premises or lands.

(2)(a) Within a reasonable time after receipt of notification, which at no time shall exceed ten days, the state board, department, or agency shall do one of the following:

(I) Comply with the terms of the notification;

(II) Acknowledge the terms of the notification and submit an acceptable plan and schedule for the completion of the plan for compliance;

(III) Request an arbitration panel to determine the final management plan.

(b) The arbitration panel selected by the local governing body shall be comprised of a weed management specialist or weed scientist, a landowner of similar land in the same county, and a third panel member chosen by agreement of the first two panel members. The state board, department, or agency shall be entitled to challenge any one member of the panel, and the local governing body shall name a new panel member from the same category. The decision of the arbitration panel shall be final.

(3) In the event the state board, department, or agency fails to comply with the notice to manage the identified noxious weeds or implement the plan developed by the arbitration panel, the local governing body in whose jurisdiction the infestation is located may enter upon such lands and undertake the management of such noxious weeds or cause the same to be done, the expense thereof to be a proper charge against said state board, department, or agency which has jurisdiction over the lands. An agreement for payment shall be

reached within two weeks after the date such an expense is submitted, with respect to the amount of reimbursement to be paid. Such agreement shall be in writing. If no agreement has been reached and if the charge is not immediately paid, such charge shall be submitted to the controller, who shall treat such amount as an encumbrance on the budget of the state board, department, or agency involved, or such charge may be recovered in any court with jurisdiction over such lands. Any state board, department, or agency may enter into a contract with the local governing body to authorize the management of noxious weeds on state-administered land on terms and conditions satisfactory to both parties.

(4) In addition to the requirements of subsection (3) of this section, the division shall enter into agreements with local governing bodies for the control of weeds on any property the division owns in fee title or has effective surface control over pursuant to a long-term lease or easement agreement. For purposes of this subsection (4) and subsection (5) of this section, "long-term lease or easement agreement" means any lease or easement agreement that exceeds ten years. Agreements between the division and local governing bodies for weed control shall describe the terms and conditions of weed control, provide an annual estimated budget for such weed control, and identify specific weed control responsibilities for the division and the property owner, if different than the division. Weed control agreements required pursuant to this subsection (4) shall be executed on or before July 1, 1997. (5) Any weed control expense incurred by a local governing body pursuant to subsection (3) of this section on any lands held by the division in fee title or by long-term lease or easement agreement, as described in subsection (4) of this section, and for which a weed control agreement as described in subsection (4) of this section has been signed, and which costs are in accordance with that long-term agreement, shall be deemed correct and final and shall be paid by the division pursuant to section 33-1-110 (6.5), C.R.S.

35-5.5-111. Cooperation with federal and state agencies. The local governing bodies of all counties and municipalities in this state are hereby authorized to enter into cooperative agreements with federal and state agencies for the integrated management of noxious weeds within their respective territorial jurisdictions.

35-5.5-112. Public rights-of-way - management of noxious weeds - charges. It shall be the duty of each local governing body and each state board, department, or agency to confirm that all public roads, public highways, public rights-of-way, and any easements appurtenant thereto, under the jurisdiction of each such entity, are in compliance with this article, and any violations of this article shall be the financial responsibility of the appropriate local governing body or state board, department, or agency.

35-5.5-113. Public nuisance - abatement. All noxious weeds, at any and all stages, their carriers, and any and all premises, plants, and things infested or exposed to infestation therewith may be declared to be a public nuisance by the local governing body having jurisdiction over the lands upon which said noxious weeds are situated. Once declared, such nuisances are subject to all laws and remedies relating to the prevention and abatement of nuisances. The local governing body, in a summary manner or otherwise, may take such action, including removal and destruction, with reference to such nuisance

as in its discretion appears necessary. The remedies of this section shall be in addition to all other remedies provided by law.

35-5.5-114.1. Survey of compliance on federal land. On or before January 1, 1998, the state weed coordinator shall survey those counties that include significant amounts of federal land to determine the level of cooperation and compliance by the federal government with this article.

35-5.5-115. Rules. The commissioner shall promulgate rules as necessary to carry out the purposes of this article, which rules shall include a designation of state noxious weeds.

35-5.5-116. Noxious weed management fund - creation - allocation of funds. (1) There is hereby created in the office of the state treasurer the noxious weed management fund. The fund shall consist of any civil penalties collected pursuant to section 35-5.5-118; any gifts, donations, and grants received pursuant to section 35-1-104 (1)(cc); and any moneys approved by the general assembly for the purpose of funding noxious weed management projects. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. The general assembly shall annually appropriate moneys in the fund to the department of agriculture for the purposes specified in subsection (2) of this section. (2) The interest earned on moneys in the noxious weed management fund and appropriated to the department of agriculture shall be expended for costs incurred by the department of agriculture in administering this article, and any moneys appropriated that exceed the amount needed for such costs may be expended for noxious weed management projects in accordance with this section. (3) The department may expend moneys through grants or contracts to communities, weed control districts, or other entities it considers appropriate for noxious weed management projects. (4) The department may expend moneys for the following purposes:

- (a) Noxious weed management programs with local weed control districts, if expenses are shared with such districts;
- (b) With the approval of the agricultural commission, the department may make special grants to local weed control districts to eradicate or contain state noxious weeds, which grants may be issued without matching funds from the district;
- (c) Administrative expenses incurred by the department;
- (d) Any project the agricultural commission determines will significantly contribute to the management of noxious weeds within the state;
- (e) With the approval of the agricultural commission, grants to the Colorado state university cooperative extension service, the Colorado state university experiment station, and universities for weed management research, evaluation, and education;
- (f) Employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. Such expenditures shall be shared with such organizations.

(5) If a new and potentially harmful noxious weed is discovered growing in the state and

its presence is verified by the department, the governor may declare a noxious weed emergency. In the absence of necessary funding from other sources, the department is authorized to allocate up to fifty thousand dollars of the principal in the noxious weed management fund to government agencies for emergency relief to manage or confine the new noxious weed species.

35-5.5-117. The state weed coordinator. (1) There shall be designated within the division of plant industry in the department of agriculture a state weed coordinator, who shall be under contract with or appointed by the commissioner.

(2) The state weed coordinator shall:

- (a) Develop a recommended management plan for the integrated management of designated noxious weeds within state-owned lands;
- (b) Facilitate cooperation between federal, state, and local land managers in the formation of a memorandum of understanding;
- (c) Provide guidance and coordination for local governmental weed managers.

35-5.5-118. Civil penalties. (1)(a) Any person who violates this article or any rule adopted pursuant to this article is subject to a civil penalty, as determined by the commissioner. The penalty shall not exceed one thousand dollars per violation; except that such penalty may be doubled if it is determined that the person has violated the provision or rule more than once. No civil penalty shall be imposed unless and until the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(b) In addition to any civil penalties assessed pursuant to paragraph (a) of this subsection (1), any person who violates the provisions of section 35-5.5-104.5, 35-5.5-108, or 35-5.5-108.5, or any rule adopted to implement these sections, shall, upon an order of the commissioner, pay the cost of inspection and eradication of list A or list B noxious weed species, including, but not limited to, any immediate remediation costs, the estimated cost of future eradication, any administrative costs, and any court cost and attorney fees incurred by the commissioner in enforcing section 35-5.5-104.5, 35-5.5-108, or 35-5.5-108.5, or any rule adopted to implement these sections. The commissioner may not enforce such order unless and until the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S. All moneys due and owing pursuant to this paragraph (b) shall be payable to the department for the payment and reimbursement of enforcement and costs associated with such enforcement and are hereby continuously appropriated to the department for such purpose.

(2) If the commissioner is unable to collect a civil penalty, payment of costs imposed pursuant to subsection (1) of this section, or if the person fails to pay all or a specified portion of such penalty or payment, the department may bring suit in any court of competent jurisdiction to recover such amount plus costs and attorney fees.

(3) Before imposing any civil penalty or payment of costs, the commissioner may consider the effect of such penalty or payment of costs on the ability of the person charged to stay in business.

(4) All civil penalties and payment of costs collected pursuant to this section shall be deposited in the noxious weed management fund created in section 35-5.5-116.

35-5.5-119. County funding. The board of county commissioners is authorized to levy a special tax, subject to the approval of the voters, upon every dollar of valuation of assessment of taxable property within the county for the purpose of creating a county fund to control noxious weeds; except that the amount raised from such levy in any one year shall not exceed the amount raised by five mills.
Effective August 6, 2003