

CHAPTER 365

AGRICULTURE

HOUSE BILL 03-1140

BY REPRESENTATIVE(S) Larson, Tochtrop, Young, Harvey, Hodge, Hoppe, Rippey, White, Coleman, McFadyen, Merrifield, Plant, Romanoff, Rose, Salazar, Smith, Stafford, Stengel, Wiens, and Williams T.;
also SENATOR(S) Entz, Chlouber, Taylor, Isgar, and Kester.

AN ACT

**CONCERNING THE CLASSIFICATION OF STATE NOXIOUS WEEDS, AND, IN CONNECTION THEREWITH,
IMPLEMENTING MANAGEMENT PROGRAMS FOR SUCH CLASSIFIED NOXIOUS WEEDS.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 35-5.5-102 (1.5), Colorado Revised Statutes, is amended to read:

35-5.5-102. Legislative declaration - rule of construction. (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 ~~natural habitat~~ ^{FOR WILDLIFE AND NATIVE PLANT COMMUNITIES} are being destroyed by noxious weeds each year; ~~The general assembly further finds and declares that~~

(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 ~~land owners~~ ^{LANDOWNERS} in developing plans for the control of noxious weeds ~~The general assembly further finds that,~~ 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

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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; ~~The general assembly declares that grants from the noxious weed management fund shall be made to allow local cooperative efforts to proceed with noxious weed management~~ 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.

SECTION 2. 35-5.5-103 (4), the introductory portion to 35-5.5-103 (9), and 35-5.5-103 (10) and (18.5), Colorado Revised Statutes, are amended, and the said 35-5.5-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

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

(4) "Commissioner" means the commissioner of the department of agriculture OR HIS OR HER DESIGNEE.

(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:

(10) "Landowner" means any owner of record of FEDERAL, TRIBAL, state, COUNTY, municipal, or private land. ~~and includes an owner of any easement, right-of-way, or estate in the land.~~

(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 WEED 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 WEED SPECIES AND REESTABLISHMENT OF DESIRABLE PLANT COMMUNITIES ON LANDS OF SIGNIFICANT ENVIRONMENTAL OR AGRICULTURAL VALUE IN ORDER TO HELP RESTORE OR MAINTAIN SAID VALUE.

(18.5) "State noxious weed" means any noxious weed identified by the commissioner by rule after ~~surveying the local advisory boards and prioritizing the top ten weeds. Said survey should be conducted every three years~~ NOTIFYING AND CONSULTING WITH THE STATE NOXIOUS WEED ADVISORY COMMITTEE CREATED IN SECTION 35-5.5-108.7.

SECTION 3. Article 5.5 of title 35, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

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.

35-5.5-108.5. 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 WHO 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 REPRESENT 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 NEGLIGENCE 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.

SECTION 4. 35-5.5-108 (2) and (3), Colorado Revised Statutes, are amended, and the said 35-5.5-108 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

35-5.5-108. Designated noxious weeds - legislative declaration. (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 THE EFFECTIVE DATE OF THIS SUBSECTION (2), AS AMENDED, 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 ARE 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 ARE 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 WILFULLY OR WANTONLY VIOLATED THE PROVISIONS OF THIS SECTION OR SECTION 35-5.5-104.5 OR 35-5.5-108.5 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.

SECTION 5. 35-5.5-118, Colorado Revised Statutes, is amended to read:

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 ~~such~~ 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 ~~the penalty~~ 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.

SECTION 6. 2-3-1203 (3), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

2-3-1203. Sunset review of advisory committees. (3) The following dates are the dates for which the statutory authorization for the designated advisory committees is scheduled for repeal:

(z) JULY 1, 2013, THE STATE NOXIOUS WEED ADVISORY COMMITTEE CREATED IN SECTION 35-5.5-108.7, C.R.S.

SECTION 7. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to noxious weeds designated by the commissioner of agriculture pursuant to section 35-5.5-108 (2), Colorado Revised Statutes, on or after the applicable effective date of this act.

Approved: June 5, 2003