

House BILL NO. 445

INTRODUCED BY

Gregory B. and Cora Masolo Foster Lash
James M. Hanson *Howard Holland* *Paul Brueckner*

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A NOXIOUS WEED SEED FREE FORAGE PROGRAM AND ADVISORY COUNCIL; ESTABLISHING THE POWERS, DUTIES, AND RULEMAKING AUTHORITY OF THE DEPARTMENT OF AGRICULTURE IN ADMINISTERING THE PROGRAM; AUTHORIZING APPLICABLE FEES; STATUTORILY APPROPRIATING PROGRAM FUNDS; PROVIDING FOR ENFORCEMENT AUTHORITY AND FOR PENALTIES, ORDERS, INJUNCTIONS, AND EMBARGOES APPLICABLE TO THE PROGRAM; AMENDING SECTIONS 7-22-2126 AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because rulemaking authority is granted to the department of agriculture to develop rules regarding implementation of the noxious weed seed free forage program. It is intended that the department, when adopting rules for the program and certification standards, processes, operations, agreements, and contracts; fees and the collection of fees; and inspections and investigation standards, ensure that the program and rules will be effective in preventing new introductions of noxious weed seed from forage in the state. The department shall base any related fees on the cost of managing and conducting the program. It is further intended that the program be conducted in a cooperative manner with federal, state, and local agencies, the regulated industry, and the public and that the department be allowed to enter into reciprocal agreements with other states or Canadian provinces as necessary for the proper administration of the program.

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 16] may be cited as the "Noxious Weed Seed Free Forage Act".

NEW SECTION. **Section 2. Findings -- purpose.** (1) The legislature finds that:

(a) natural resources of the state need to be protected from noxious weeds and their seeds;

1 (b) the movement of agricultural crops or commodities as livestock forage, bedding, mulch, and
2 related materials, including pellets, cubes, and other processed livestock feeds with noxious weed seeds,
3 causes new and expanding noxious weed infestations on private and government-managed lands, which
4 adversely impact agricultural, forest, recreational, and other lands;

5 (c) it is necessary to develop and implement a state forage and product noxious weed seed free
6 program in cooperation with federal, state, and local government, the university system, and private
7 enterprise;

8 (d) an educational program is needed to inform all citizens of the importance of the incentive to
9 market and handle forage that is free of noxious weed seeds;

10 (e) a cooperative forage and product distribution system with federal, state, local, and private land
11 manager participation is needed to prevent increased noxious weed infestations; and

12 (f) compliance standards involving the import or export of forage, in cooperation with county weed
13 districts and the department, are needed.

14 (2) The purpose of [sections 1 through 16] is to promote incentives to benefit the people of this
15 state and other states by producing and making available forage free of noxious weed seeds.

16
17 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 16], the following
18 definitions apply:

19 (1) "Advisory council" means the Montana noxious weed seed free forage advisory council. Except
20 as provided in [section 4], the council is subject to the provisions of 2-15-122.

21 (2) "Certification" means the state-approved and documented process of determining within a
22 standard range of variances or tolerances that forage production fields are free of the seeds of noxious
23 weeds, as defined in 7-22-2101(7)(a)(i), which process allows a person to sell the forage as noxious weed
24 seed free and to attach approved certification identification.

25 (3) "Forage" means any crop, including alfalfa, grass, small grains, straw, and similar crops and
26 commodities, that is grown, harvested, and sold for livestock forage, bedding material, or mulch or related
27 uses and the byproducts of those crops or commodities that have been processed into pellets, cubes, or
28 related products.

29 (4) "Noxious weed seed free" means that forage has an absence of noxious weed seeds within a
30 standardized range of variances or tolerances established by department rule.

1 (5) "Person" means a natural person, individual, firm, partnership, association, corporation,
2 company, joint-stock association, body politic, or organized group of persons, whether incorporated or not,
3 and any trustee, receiver, assignee, or similar representative.

4 (6) "Producer" means a person engaged in growing forage, a tenant personally engaged in growing
5 forage, or both the owner and the tenant jointly and includes a person, cooperative organization, trust,
6 sharecropper, and any other business entity, devices, and arrangements that grow forage that is proposed
7 to be certified as noxious weed seed free.

8 (7) "Sale" or "sell" means the selling, wholesaling, distributing, offering, exposing for sale,
9 advertising, exchanging, brokering, bartering, or giving away by any person within this state of any forage
10 as noxious weed seed free or certified or approved as noxious weed seed free.

11
12 **NEW SECTION. Section 4. Composition of advisory council.** (1) The director of the department
13 shall appoint an advisory council to provide advice to the department concerning the administration of
14 [sections 1 through 16].

15 (2) The advisory council must be composed of nine members, as follows:

16 (a) the director of the department or a designee, who shall serve as presiding officer;

17 (b) the director of the Montana state university extension service or a designated representative;

18 (c) one member who is a producer of forage under a certified forage noxious weed seed free
19 program;

20 (d) one member involved in the processing of forage into pellets, cubes, or related products;

21 (e) one member representing the livestock industry;

22 (f) one member representing the agricultural industry;

23 (g) one member representing county weed districts involved in a forage certification program, who
24 must be a member of the Montana weed control association;

25 (h) one member representing an outfitter's or guide's organization; and

26 (i) one member representing hunters, anglers, or recreationists.

27
28 **NEW SECTION. Section 5. Powers and duties of department.** The department may:

29 (1) provide for administration and enforcement of [sections 1 through 16];

30 (2) enter into contracts and agreements;

1 (3) authorize the purchase of all office equipment or supplies and incur all other reasonable and
2 necessary expenses and obligations that are required for administering the provisions of [sections 1 through
3 16];

4 (4) become a member of and purchase membership in trade organizations and subscribe to and
5 purchase trade bulletins, journals, and other trade publications;

6 (5) plan and conduct publicity and promotional campaigns to increase the incentives to use
7 Montana forage that is free of noxious weed seed and to make publicity and promotional contracts and
8 other agreements as necessary;

9 (6) establish certification standards and processes for forage and byproducts of forage and
10 determine if processed forage byproducts are noxious weed seed free, based upon field of origin or
11 verification that the production process has destroyed the viability of noxious weed seeds;

12 (7) establish forage inspection fee assessments to make the certification program financially
13 self-supporting;

14 (8) establish a standard range of variances or tolerances for noxious weed seeds in different forage
15 subject to certification as noxious weed seed free, based upon scientific and operational considerations;

16 (9) administer rules and orders to be adopted for the exercise of its power and the performance
17 of its duties, in accordance with Title 2, chapter 4;

18 (10) cooperate with any local, state, or national organization or agency, whether voluntary or
19 created by the law of any state or the United States government, and enter into contracts or agreements
20 with organizations or agencies for carrying on a joint campaign of research, education, product protection,
21 publicity, reciprocity, and enforcement of [sections 1 through 16];

22 (11) hire employees and designate authorized agents to conduct certification inspections,
23 investigations, and sampling and to collect evidence of possible violations of [sections 1 through 16]; and

24 (12) accept grants, donations, and gifts from any source and expend those funds for any purpose
25 consistent with [sections 1 through 16], which may be specified as a condition of any grant, donation, or
26 gift.

27
28 **NEW SECTION. Section 6. Certification.** (1) A person shall make an annual application to the
29 department for certifying forage. The person shall comply with all certification standards and processes
30 and pay any required fees prior to receiving certification approval and identification markers for the forage.

1 If a production tonnage fee is established, the department may establish the method and time of payment.

2 (2) A person who wishes to deliver forage as noxious weed seed free into this state from out of
3 state shall notify the department and pay any application fee or other appropriate fee, including an
4 inspection fee, if required, prior to delivering the forage. The forage must be certified as noxious weed seed
5 free from the state or province of origin if the department approves the certification through a reciprocal
6 agreement or other process approved by the department. The department may waive some certification
7 documentation or fees based upon the provisions in a reciprocal agreement.

8

9 NEW SECTION. Section 7. Fees. (1) The department may establish fees to support the cost of
10 administering the noxious weed seed free forage program. Fees may be established for:

11 (a) processing applications;

12 (b) per acre inspection of forage;

13 (c) inspection of facilities;

14 (d) minimum administration;

15 (e) inspection related to processing or manufacturing forage into pellets, cubes, and related
16 products;

17 (f) production tonnage;

18 (g) certification identification markers;

19 (h) mileage and per diem; and

20 (i) import inspection.

21 (2) Fees, structures, and procedures must be recommended to the department by the advisory
22 council.

23

24 NEW SECTION. Section 8. Deposit and disbursement of funds -- records -- investment. (1) There
25 is a state noxious weed forage account in the state special revenue account. All funds received by the
26 department from fees or penalties collected or received under [sections 5 through 7, 13, and 14(1)], and
27 all other related funds received must be deposited in the state noxious weed forage account.

28 (2) All funds referred to in subsection (1) are statutorily appropriated, as provided in 17-7-502, to
29 the department and may be used only for the payment of expenses incurred in carrying out the provisions
30 of [sections 1 through 16].

1 (3) Funds received under [sections 5 through 7, 13, and 14(1)] that are not immediately required
2 for the purposes of [sections 1 through 16] must be invested under provisions of the unified investment
3 program established in Title 17, chapter 6, part 2. The income from the investments must be deposited
4 in the state special revenue fund and credited to the department.

5 (4) Funds received pursuant to [sections 1 through 16] are appropriated to the department for the
6 purposes of [sections 1 through 16].

7
8 **NEW SECTION. Section 9. Rules.** The department may adopt rules necessary to carry out its
9 responsibilities under [sections 1 through 16] in accordance with Title 2, chapter 4. The rules may include
10 but are not limited to:

- 11 (1) contracts and agreements;
12 (2) certification standards, processing, and sampling and equipment standards and operation;
13 (3) inspections and investigation procedures and standards;
14 (4) operations;
15 (5) records;
16 (6) application, inspection, production, import, certification identification, mileage, and per diem fees
17 and their collection;
18 (7) reciprocal agreements with other states or Canadian provinces; and
19 (8) penalties, stop sales, condemnation, and other orders.

20
21 **NEW SECTION. Section 10. Investigation and enforcement authority.** (1) In enforcing the
22 provisions of [sections 1 through 16], the department or its authorized agents, upon reasonable cause, may
23 enter any private or public premises, property, or vehicle with a warrant or with the consent of the
24 inhabitant or owner to inspect, sample, or investigate at reasonable times forage subject to certification or
25 sale as certified forage or as free of noxious weed seeds.

26 (2) All enforcement actions and orders must be made under the contested case provisions of Title
27 2, chapter 4, part 6.

28
29 **NEW SECTION. Section 11. Stop sale, use, or removal order.** When the department has reasonable
30 cause to believe that a person is selling, distributing, storing, transporting, or using forage in violation of

1 any of the provisions of [sections 1 through 16], a written stop sale, use, or removal order may be issued
2 to that person. If the person is not available for service of the order, the department may attach the order
3 to the forage and notify the person. The forage may not be sold, used, or removed until compliance with
4 the provisions of [sections 1 through 16] is achieved. The department may release the order once
5 compliance is achieved. The department may require that the forage be sold or used only as an uncertified
6 forage or delivered back to the seller, or the department may order condemnation of any forage that does
7 not meet the requirement of [sections 1 through 16] or other alternatives established by rule. The
8 department, upon finding that the person responsible for the embargoed forage has failed to comply with
9 the order in any respect, may petition the district court of the first judicial district for enforcement of the
10 order.

11
12 **NEW SECTION. Section 12. Prohibited acts.** (1) It is unlawful for a person to certify or sell as
13 certified or as noxious weed seed free any forage as free of noxious weed seed within this state, unless
14 the forage is identified under a department-approved process as "Montana certified" and the forage meets
15 all the requirements of [sections 1 through 16]. A person may not designate forage as certified or use any
16 other title, designation, words, letters, abbreviations, sign, card, or identifier tending to indicate that the
17 forage is certified unless the forage meets all the requirements of [sections 1 through 16].

18 (2) Forage certified under a reciprocal agreement between the department and another state or
19 Canadian province and identified according to approved certification standards to be shipped into the state
20 or shipped to another state or province must meet the requirements of [sections 1 through 16].

21 (3) All forage products used by public utilities and local, county, state, or federal agencies,
22 including but not limited to mulches, bedding materials, and erosion control barriers, must be certified as
23 noxious weed seed free. All seeds used for reclamation purposes by public utilities and local, county, state,
24 or federal agencies must be free of noxious weed seeds and be certified seed according to Title 80, chapter
25 5.

26
27 **NEW SECTION. Section 13. Penalty for nonpayment of fees.** In addition to the penalties set out
28 in [section 14], a person who fails to pay or improperly pays any fee assessment or fee assessed under the
29 provisions of [sections 1 through 16] is subject to a penalty of \$100 or double the assessment, whichever
30 is greater, including the original fee. The penalty must be paid to the department and deposited as provided

1 in [section 8]. A certification issued to a person who fails to pay or improperly pays any fee assessment
2 or fee assessed under the provisions of [sections 1 through 16] is invalid until the original fee and penalty
3 are paid to the department.

4
5 **NEW SECTION. Section 14. Penalties.** A person who violates or aids in a violation of any of the
6 provisions of [sections 1 through 16] or any rules or orders of the department adopted under [sections 1
7 through 16] is subject to the following penalties:

8 (1) a civil penalty of not more than \$1,000 for each offense. Assessment of a civil penalty by the
9 department may be made in conjunction with any other warning, order, or administrative action authorized
10 by [sections 1 through 16] that is issued by the department.

11 (2) a misdemeanor penalty of not less than \$100 or more than \$1,500 or up to 6 months'
12 imprisonment, or both, if the person is convicted in district court.

13
14 **NEW SECTION. Section 15. Injunction authorized.** The department may commence a civil action
15 in the district court of the first judicial district seeking appropriate relief, including a permanent or temporary
16 injunction, for a violation of [sections 1 through 16].

17
18 **NEW SECTION. Section 16. Embargo.** Upon receiving a report from a district weed board, as
19 provided in 7-22-2126, that forage is subject to embargo and upon verification of a violation of [sections
20 1 through 16], the department shall enforce the embargo throughout the state and issue appropriate stop
21 sale orders as provided in [section 11].

22
23 **Section 17.** Section 7-22-2126, MCA, is amended to read:

24 **"7-22-2126. Embargo. (1)** The board may establish voluntary embargo programs to reduce the
25 spread of noxious weeds within the district or the introduction of noxious weeds into the district.

26 **(2)** The board shall establish a special embargo program for the movement of forage, as defined
27 in [section 3], into or out of the county. The board may implement an embargo upon confirmation of a
28 violation, based upon complaint investigations, requests for investigation by the department, or through
29 county investigations, if the forage has not been certified by the state and is being sold as noxious weed
30 seed free, as defined in [section 3].

1 (3) A person in possession of the forage that is not in compliance with [sections 1 through 16] may
 2 not move or dispose of the forage that is subject to embargo until written permission is obtained from the
 3 board. If the forage that is subject to embargo is found to have met all of the requirements of the state
 4 certification program and the department verifies compliance with the program, the board shall release the
 5 embargo. The board may also release the forage under the following conditions:

6 (a) verification of guaranteed delivery back to the original producer, as defined in [section 3];

7 (b) burning or disposal of the forage in a manner acceptable to the board; or

8 (c) other alternatives approved by the board.

9 (4) The board shall report all embargoes issued and the final resolution of an embargo imposed
 10 pursuant to a violation of [sections 1 through 16] to the department within 48 hours.

11 (5) The person in possession of forage subject to embargo shall comply with the conditions
 12 approved by the board within 30 days. If resolution is not accomplished, the board may condemn the
 13 forage and implement through its employees any of the conditions set forth in this section. If the board
 14 proceeds with correction of these conditions after 30 days, all actual expenses incurred and documented
 15 by the board are payable by the producer unless the person in possession of the forage also has an interest
 16 in the forage."

17
 18 **Section 18.** Section 17-7-502, MCA, is amended to read:

19 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
 20 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
 21 without the need for a biennial legislative appropriation or budget amendment.

22 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
 23 with both of the following provisions:

24 (a) The law containing the statutory authority must be listed in subsection (3).

25 (b) The law or portion of the law making a statutory appropriation must specifically state that a
 26 statutory appropriation is made as provided in this section.

27 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
 28 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
 29 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410;
 30 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409;

1 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513;
 2 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503;
 3 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402;
 4 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504;
 5 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205;
 6 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416;
 7 [section 8]; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215;
 8 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

9 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 10 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
 11 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
 12 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
 13 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
 14 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
 15 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
 16 supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates
 17 July 1, 1995.)"

18

19 **NEW SECTION. Section 19. Codification instruction.** [Sections 1 through 16] are intended to be
 20 codified as an integral part of Title 80, chapter 7, and the provisions of Title 80, chapter 7, apply to
 21 [sections 1 through 16].

22

23 **NEW SECTION. Section 20. Severability.** If a part of [this act] is invalid, all valid parts that are
 24 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
 25 applications, the part remains in effect in all valid applications that are severable from the invalid
 26 applications.

27

28 **NEW SECTION. Section 21. Effective dates.** (1) [Sections 1 through 5, 9, and 18 through 20
 29 and this section] are effective on passage and approval.

30 (2) [Sections 6 through 8 and 10 through 17] are effective January 1, 1996.

-END-

- 10 -

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0445, as introduced

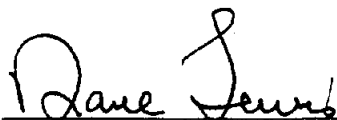
DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing a noxious weed seed free forage program and advisory council; establishing the powers, duties, and rulemaking authority of the Department of Agriculture in administering the program; authorizing applicable fees; statutorily appropriating program funds; providing for enforcement authority and for penalties, orders, injunctions, and embargoes applicable to the program; and providing an effective dates.

ASSUMPTIONS:

1. The Department of Agriculture will administer the program. Field inspections will be conducted by county weed districts, extension agents or other local contractors.
2. The county weed districts, agents or contractors will collect inspection fees and remit to the department. The fees may include inspection, mileage and per diem to assist in covering expenses.
3. Based on historical program data, 10,000 acres may be inspected at least once during each fiscal year.
4. It is estimated that the inspection fee will range from \$1.00 - \$2.00 per acre, plus mileage and per diem. For the purposes of this fiscal note, revenues are based on \$2.00 per acre plus an average of \$21.40 for mileage and per diem. There will be first cutting inspection of 10,000 acres, and second cutting inspection of 5,000 acres.
5. Revenue from fees is expected to increase as the weed seed free forage program is implemented.
6. The program funds are statutorily appropriated. The following assumptions are an indication of how the funds will be expended.
7. The nine member advisory council will be hold three one-day meetings per year at an estimated cost of \$8,435 per year. The estimated costs exclude those travel expenses for the Department of Agriculture director and the MSU Extension Service assistant vice president.
8. Estimated operating expenses and program revenues are based on historical pilot extension service program.
9. Personnel services are budgeted with an additional 0.50 FTE to conduct the administrative and compliance responsibilities.
10. A contract from the Noxious Weed Management Program will be issued to assist in administering this act, which will necessitate additional appropriation authority.
11. Based upon recommendations of the advisory council, the department will establish rules for fee structure and certification standards.
12. It is anticipated that no civil penalties will be assessed during the implementation process. If a serious violation occurs, there could be penalty fees assessed.
13. In addition to the statutory appropriation authorized in this legislation, the agency will need \$28,099 of state special revenue authority for contracted services.

(continued on page 2)

 2-11-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


ED GRADY, PRIMARY SPONSOR DATE

Fiscal Note for HB0445, as introduced

HB 445

FISCAL IMPACT:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Statutorily Appropriated:		
<u>Expenditures:</u>		
FTE	0.50	0.50
Personal Services	17,478	17,529
Operating Expenses	<u>16,322</u>	<u>16,271</u>
Total	33,800	33,800
 <u>Revenues:</u>		
Noxious Weed Forage (02)	33,800	33,800
 <u>Net Impact:</u>	 0	 0
 Non-Statutorily Appropriated:		
<u>Expenditures:</u>		
Operating Expenses	28,099	28,099
 <u>Funding:</u>		
Noxious Weed Management (02)	28,099	28,099
 <u>Net Impact:</u>	 0	 0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

County weed districts, extension agents or contractors will conduct local weed seed free forage inspections.

Technical Notes:

As a matter of policy, FTE and ongoing operating expenses are not usually statutorily appropriated.

DEDICATION OF REVENUE:

- a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (Please explain)

Forage producers raising weed seed free products pay for inspections. Revenues from noxious weed management funds would also be used to support this program. The program benefits all parties by preventing introduction of weed seeds into uninfested areas.

- b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

Program inspection and related revenue will be directly tied to the cost of administering the program. Program costs and revenue will fluctuate annually due to fluctuation in the acreage requiring inspection as weed seed free forage.

Inspection and related fees on the forage would be under the Constitutional provision found in Article 12, Section 1 of the 1972 Constitution.

- c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended? Yes No (if no, explain)

If the inspection fees are coupled with noxious weed management funds, the revenue is adequate for FY 96-97.

- d) Does the need for this state special revenue provision still exist? Yes No (Explain)

Not applicable -- new program

- e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)

Yes. The bill specifies that all inspection and other fees are statutorily appropriated, however, noxious weed management funds are subject to legislative appropriation and audit.

- f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please explain)

Not applicable -- new program.

- g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

All state revenue accounts are subject to audit of revenue and expenditures.

1 HOUSE BILL NO. 445

2 INTRODUCED BY GRADY, BECK, COBB, MASOLO, FOSTER, TASH, OHS, MESAROS, HAYNE,
3 M. HANSON, HIBBARD, HOLLAND, DEBRUYCKER, BROWN

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A NOXIOUS WEED SEED FREE FORAGE
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7 AUTHORITY OF THE DEPARTMENT OF AGRICULTURE IN ADMINISTERING THE PROGRAM; AUTHORIZING
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29
30 NEW SECTION. **Section 2. Findings -- purpose.** (1) The legislature finds that:

1 (a) natural resources of the state need to be protected from noxious weeds and their seeds;

2 (b) the movement of agricultural crops or commodities as livestock forage, bedding, mulch, and
3 related materials, including pellets, cubes, and other processed livestock feeds with noxious weed seeds,
4 causes new and expanding noxious weed infestations on private and government-managed lands, which
5 adversely impact agricultural, forest, recreational, and other lands;

6 (c) it is necessary to develop and implement a state forage and product noxious weed seed free
7 program in cooperation with federal, state, and local government, the university system, and private
8 enterprise;

9 (d) an educational program is needed to inform all citizens of the importance of the incentive to
10 market and handle forage that is free of noxious weed seeds;

11 (e) a cooperative forage and product distribution system with federal, state, local, and private land
12 manager participation is needed to prevent increased noxious weed infestations; and

13 (f) compliance standards involving the import or export of forage, in cooperation with county weed
14 districts and the department, are needed.

15 (2) The purpose of [sections 1 through 16] is to promote incentives to benefit the people of this
16 state and other states by producing and making available forage free of noxious weed seeds.

17

18 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 16], the following
19 definitions apply:

20 (1) "Advisory council" means the Montana noxious weed seed free forage advisory council. Except
21 as provided in [section 4], the council is subject to the provisions of 2-15-122.

22 (2) "Certification" means the state-approved and documented process of determining within a
23 standard range of variances or tolerances that forage production fields are free of the seeds of noxious
24 weeds, as defined in 7-22-2101(7)(a)(i), which process allows a person to sell the forage as noxious weed
25 seed free and to attach approved certification identification.

26 (3) "Forage" means any crop, including alfalfa, grass, small grains, straw, and similar crops and
27 commodities, that is grown, harvested, and sold for livestock forage, bedding material, or mulch or related
28 uses and the byproducts of those crops or commodities that have been processed into pellets, cubes, or
29 related products.

30 (4) "Noxious weed seed free" means that forage has an absence of noxious weed seeds within a

1 standardized range of variances or tolerances established by department rule.

2 (5) "Person" means a natural person, individual, firm, partnership, association, corporation,
3 company, joint-stock association, body politic, or organized group of persons, whether incorporated or not,
4 and any trustee, receiver, assignee, or similar representative.

5 (6) "Producer" means a person engaged in growing forage, a tenant personally engaged in growing
6 forage, or both the owner and the tenant jointly and includes a person, cooperative organization, trust,
7 sharecropper, and any other business entity, devices, and arrangements that grow forage that is proposed
8 to be certified as noxious weed seed free.

9 (7) "Sale" or "sell" means the selling, wholesaling, distributing, offering, exposing for sale,
10 advertising, exchanging, brokering, bartering, or giving away by any person within this state of any forage
11 as noxious weed seed free or certified or approved as noxious weed seed free.

12

13 NEW SECTION. Section 4. Composition of advisory council. (1) The director of the department
14 shall appoint an advisory council to provide advice to the department concerning the administration of
15 [sections 1 through 16].

16 (2) The advisory council must be composed of ~~nine~~ 10 VOTING members AND 2 EX OFFICIO,
17 NONVOTING MEMBERS, as follows:

18 (a) the director of the department or a designee, who shall serve as presiding officer;

19 ~~(b) the director of the Montana state university extension service or a designated representative;~~

20 ~~(c) one member who is a producer~~ FOUR MEMBERS WHO ARE PRODUCERS of forage under
21 a certified forage noxious weed seed free program AND WHO REPRESENT DIFFERENT GEOGRAPHICAL
22 AREAS OF THE STATE;

23 ~~(d) one member involved in the processing of forage into pellets, cubes, or related products;~~

24 ~~(e) one member representing the livestock~~ OR AGRICULTURAL industry;

25 ~~(f) one member representing the agricultural industry;~~

26 ~~(g) one member~~ TWO MEMBERS representing county weed districts involved in a forage
27 certification program, who must be ~~a member~~ MEMBERS of the Montana weed control association AND
28 WHO REPRESENT DIFFERENT GEOGRAPHICAL AREAS OF THE STATE;

29 ~~(h) one member representing an outfitter's or guide's organization; and~~

30 ~~(i) one member representing hunters, anglers, or recreationists.~~

1 (G) THE DIRECTOR OF THE MONTANA STATE UNIVERSITY EXTENSION SERVICE OR A
 2 DESIGNATED REPRESENTATIVE, WHO IS AN EX OFFICIO, NONVOTING MEMBER; AND

3 (H) THE DIRECTOR OF THE MONTANA STATE UNIVERSITY AGRICULTURAL EXTENSION
 4 SERVICE, WHO IS AN EX OFFICIO, NONVOTING MEMBER.

5 (3) THE MEMBERS SHALL SERVE STAGGERED 3-YEAR TERMS. A MEMBER MAY NOT SERVE
 6 FOR MORE THAN TWO CONSECUTIVE TERMS.

7
 8 **NEW SECTION. Section 5. Powers and duties of department.** The department may:

9 (1) provide for administration and enforcement of [sections 1 through 16];

10 (2) enter into contracts and agreements;

11 (3) authorize the purchase of all office equipment or supplies and incur all other reasonable and
 12 necessary expenses and obligations that are required for administering the provisions of [sections 1 through
 13 16];

14 (4) become a member of and purchase membership in trade organizations and subscribe to and
 15 purchase trade bulletins, journals, and other trade publications;

16 (5) plan and conduct publicity and promotional campaigns to increase the incentives to use
 17 Montana forage that is free of noxious weed seed and to make publicity and promotional contracts and
 18 other agreements as necessary;

19 (6) establish certification standards and processes for forage and byproducts of forage and
 20 determine if processed forage byproducts are noxious weed seed free, based upon field of origin or
 21 verification that the production process has destroyed the viability of noxious weed seeds;

22 (7) establish ~~forage inspection~~ fee assessments AND ACCEPT OTHER FUNDS to make the
 23 certification program financially self-supporting;

24 (8) establish a standard range of variances or tolerances for noxious weed seeds in different forage
 25 subject to certification as noxious weed seed free, based upon scientific and operational considerations;

26 (9) administer rules and orders to be adopted for the exercise of its power and the performance
 27 of its duties, in accordance with Title 2, chapter 4;

28 (10) cooperate with any local, state, or national organization or agency, whether voluntary or
 29 created by the law of any state or the United States government, and enter into contracts or agreements
 30 with organizations or agencies for carrying on a joint campaign of research, education, product protection,

1 publicity, reciprocity, and enforcement of [sections 1 through 16];

2 (11) hire employees and designate authorized agents to conduct certification inspections,
3 investigations, and sampling and to collect evidence of possible violations of [sections 1 through 16]; and

4 (12) accept grants, donations, and gifts from any source and expend those funds for any purpose
5 consistent with [sections 1 through 16], which may be specified as a condition of any grant, donation, or
6 gift.

7
8 **NEW SECTION. Section 6. Certification.** (1) A person shall make an annual application to the
9 department for certifying forage. The person shall comply with all certification standards and processes
10 and pay any required fees prior to receiving certification approval and identification markers for the forage.
11 If a production tonnage fee is established, the department may establish the method and time of payment.

12 (2) A person who wishes to deliver forage as noxious weed seed free into this state from out of
13 state shall notify the department and pay any application fee or other appropriate fee, including an
14 inspection fee, if required, prior to delivering the forage. The forage must be certified as noxious weed seed
15 free from the state or province of origin if the department approves the certification through a reciprocal
16 agreement or other process approved by the department. The department may waive some certification
17 documentation or fees based upon the provisions in a reciprocal agreement.

18
19 **NEW SECTION. Section 7. Fees.** (1) The department, BASED ON THE ADVICE OF THE
20 ADVISORY COUNCIL, may establish fees to support the cost of administering the noxious weed seed free
21 forage program. Fees may be established for:

22 (a) processing applications;

23 (b) per acre inspection of forage;

24 (c) inspection of facilities;

25 (d) minimum administration;

26 (e) inspection related to processing or manufacturing forage into pellets, cubes, and related
27 products;

28 ~~(f) production tonnage;~~

29 ~~(g)~~(F) certification identification markers;

30 ~~(h)~~(G) mileage and per diem; and

1 ~~(H)~~ import inspection.

2 (2) Fees, structures, and procedures must be recommended to the department by the advisory
3 council.

4
5 **NEW SECTION. Section 8. Deposit and disbursement of funds -- records -- investment.** (1) There
6 is a state noxious weed forage account in the state special revenue account. All funds received by the
7 department from fees or penalties collected or received under [sections 5 through 7, 13, and 14(1)], and
8 all other related funds received must be deposited in the state noxious weed forage account.

9 ~~(2) All funds referred to in subsection (1) are statutorily appropriated, as provided in 17-7-502, to~~
10 ~~the department and may be used only for the payment of expenses incurred in carrying out the provisions~~
11 ~~of [sections 1 through 16].~~ **THE DEPARTMENT MAY BY CONTRACT ALLOW FOR THE COLLECTION OF**
12 **FEES AUTHORIZED UNDER [SECTION 7]. A PORTION OF THE FEES COLLECTED MAY BE RETAINED BY**
13 **THE COLLECTOR, AND THE PORTION OF THE FEES ASSIGNED TO THE DEPARTMENT MUST BE**
14 **SUBMITTED TO THE DEPARTMENT. THE CONTRACT MUST REQUIRE:**

15 **(A) A RECORD OF THE NAME OF THE PERSON COLLECTING FEES;**

16 **(B) A RECORD OF FEES COLLECTED;**

17 **(C) A RECORD OF THE AMOUNTS SUBMITTED TO THE DEPARTMENT;**

18 **(D) A RECORD OF THE AMOUNT RETAINED BY THE COLLECTOR; AND**

19 **(E) THAT ALL RECORDS BE KEPT IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING**
20 **PRINCIPLES.**

21 (3) Funds received under [sections 5 through 7, 13, and 14(1)] that are not immediately required
22 for the purposes of [sections 1 through 16] must be invested under provisions of the unified investment
23 program established in Title 17, chapter 6, part 2. The income from the investments must be deposited
24 in the state special revenue fund and credited to the department.

25 (4) Funds received pursuant to [sections 1 through 16] are appropriated to the department **FOR**
26 **THE ADMINISTRATION OF THE NOXIOUS WEED SEED FREE FORAGE PROGRAM AND** for the purposes
27 of [sections 1 through 16].

28
29 **NEW SECTION. Section 9. Rules.** The department may, **BASED ON THE ADVICE OF THE**
30 **ADVISORY COUNCIL APPOINTED UNDER [SECTION 4],** adopt rules necessary to carry out its

1 responsibilities under [sections 1 through 16] in accordance with Title 2, chapter 4. The rules may include
2 but are not limited to:

3 (1) contracts and agreements;

4 (2) certification standards, processing, and sampling and equipment standards and operation;

5 (3) inspections and investigation procedures and standards;

6 (4) operations;

7 (5) records;

8 (6) application, inspection, production, import, certification identification, mileage, and per diem
9 fees and their collection;

10 (7) reciprocal agreements with other states or Canadian provinces; and

11 (8) penalties, stop sales, condemnation, and other orders.

12

13 **NEW SECTION. Section 10. Investigation and enforcement authority.** (1) In enforcing the
14 provisions of [sections 1 through 16], the department or its authorized agents, upon reasonable cause, may
15 enter any private or public premises, property, or vehicle with a warrant or with the consent of the
16 inhabitant or owner to inspect, sample, or investigate at reasonable times forage subject to certification or
17 sale as certified forage or as free of noxious weed seeds.

18 (2) All enforcement actions and orders must be made under the contested case provisions of Title
19 2, chapter 4, part 6.

20

21 **NEW SECTION. Section 11. Stop sale, use, or removal order.** When the department has
22 reasonable cause to believe that a person is selling, distributing, storing, transporting, or using forage in
23 violation of any of the provisions of [sections 1 through 16], a written stop sale, use, or removal order may
24 be issued to that person. If the person is not available for service of the order, the department may attach
25 the order to the forage and notify the person. The forage may not be sold, used, or removed until
26 compliance with the provisions of [sections 1 through 16] is achieved. The department may release the
27 order once compliance is achieved. The department may require that the forage be sold or used only as
28 an uncertified forage or delivered back to the seller, or the department may order condemnation of any
29 forage that does not meet the requirement of [sections 1 through 16] or other alternatives established by
30 rule. The department, upon finding that the person responsible for the embargoed forage has failed to

1 comply with the order in any respect, may petition the district court of the first judicial district for
2 enforcement of the order.

3
4 **NEW SECTION. Section 12. Prohibited acts.** (1) It is unlawful for a person to certify or sell as
5 certified or as noxious weed seed free any forage as free of noxious weed seed within this state, unless
6 the forage is identified under a department-approved process as "Montana certified" and the forage meets
7 all the requirements of [sections 1 through 16]. A person may not designate forage as certified or use any
8 other title, designation, words, letters, abbreviations, sign, card, or identifier tending to indicate that the
9 forage is certified unless the forage meets all the requirements of [sections 1 through 16].

10 (2) Forage certified under a reciprocal agreement between the department and another state or
11 Canadian province and identified according to approved certification standards to be shipped into the state
12 or shipped to another state or province must meet the requirements of [sections 1 through 16].

13 (3) All forage products used by public utilities and local, county, state, or federal agencies,
14 including but not limited to mulches, bedding materials, and erosion control barriers, must be certified as
15 noxious weed seed free. All seeds used for reclamation purposes by public utilities and local, county, state,
16 or federal agencies must be free of noxious weed seeds and be certified seed according to Title 80, chapter
17 5.

18
19 **NEW SECTION. Section 13. Penalty for nonpayment of fees.** In addition to the penalties set out
20 in [section 14], a person who fails to pay or improperly pays any fee assessment or fee assessed under the
21 provisions of [sections 1 through 16] is subject to a penalty of \$100 or double the assessment, whichever
22 is greater, including the original fee. The penalty must be paid to the department and deposited as provided
23 in [section 8]. A certification issued to a person who fails to pay or improperly pays any fee assessment
24 or fee assessed under the provisions of [sections 1 through 16] is invalid until the original fee and penalty
25 are paid to the department.

26
27 **NEW SECTION. Section 14. Penalties.** A person who violates or aids in a violation of any of the
28 provisions of [sections 1 through 16] or any rules or orders of the department adopted under [sections 1
29 through 16] is subject to the following penalties:

30 (1) a civil penalty of not more than \$1,000 for each offense. Assessment of a civil penalty by the

1 department may be made in conjunction with any other warning, order, or administrative action authorized
2 by [sections 1 through 16] that is issued by the department.

3 (2) a misdemeanor penalty of not less than \$100 or more than \$1,500 or up to 6 months'
4 imprisonment, or both, if the person is convicted in district court.

5
6 **NEW SECTION. Section 15. Injunction authorized.** The department may commence a civil action
7 in the district court of the first judicial district seeking appropriate relief, including a permanent or temporary
8 injunction, for a violation of [sections 1 through 16].

9
10 **NEW SECTION. Section 16. Embargo.** Upon receiving a report from a district weed board, as
11 provided in 7-22-2126, that forage is subject to embargo and upon verification of a violation of [sections
12 1 through 16], the department shall enforce the embargo throughout the state and issue appropriate stop
13 sale orders as provided in [section 11].

14
15 **Section 17.** Section 7-22-2126, MCA, is amended to read:
16 "7-22-2126. **Embargo.** (1) The board may establish voluntary embargo programs to reduce the
17 spread of noxious weeds within the district or the introduction of noxious weeds into the district.

18 (2) The board shall establish a special embargo program for the movement of forage, as defined
19 in [section 3], into or out of the county. The board may implement an embargo upon confirmation of a
20 violation, based upon complaint investigations, requests for investigation by the department, or through
21 county investigations, if the forage has not been certified by the state and is being sold as noxious weed
22 seed free, as defined in [section 3].

23 (3) A person in possession of the forage that is not in compliance with [sections 1 through 16] may
24 not move or dispose of the forage that is subject to embargo until written permission is obtained from the
25 board. If the forage that is subject to embargo is found to have met all of the requirements of the state
26 certification program and the department verifies compliance with the program, the board shall release the
27 embargo. The board may also release the forage under the following conditions:

- 28 (a) verification of guaranteed delivery back to the original producer, as defined in [section 3];
29 (b) burning or disposal of the forage in a manner acceptable to the board; or
30 (c) other alternatives approved by the board.

1 (4) The board shall report all embargoes issued and the final resolution of an embargo imposed
 2 pursuant to a violation of [sections 1 through 16] to the department within 48 hours.

3 (5) The person in possession of forage subject to embargo shall comply with the conditions
 4 approved by the board within 30 days. If resolution is not accomplished, the board may condemn the
 5 forage and implement through its employees any of the conditions set forth in this section. If the board
 6 proceeds with correction of these conditions after 30 days, all actual expenses incurred and documented
 7 by the board are payable by the producer unless the person in possession of the forage also has an interest
 8 in the forage."

9
 10 ~~Section 18. Section 17-7-502, MCA, is amended to read:~~

11 ~~"17-7-502. Statutory appropriations—definition—requisites for validity. (1) A statutory~~
 12 ~~appropriation is an appropriation made by permanent law that authorizes spending by a state agency~~
 13 ~~without the need for a biennial legislative appropriation or budget amendment.~~

14 ~~(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply~~
 15 ~~with both of the following provisions:~~

16 ~~(a) The law containing the statutory authority must be listed in subsection (3).~~

17 ~~(b) The law or portion of the law making a statutory appropriation must specifically state that a~~
 18 ~~statutory appropriation is made as provided in this section.~~

19 ~~(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-106;~~
 20 ~~2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;~~
 21 ~~15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410;~~
 22 ~~16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409;~~
 23 ~~17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513;~~
 24 ~~19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503;~~
 25 ~~23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402;~~
 26 ~~27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504;~~
 27 ~~44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-206;~~
 28 ~~75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416;~~
 29 ~~[section 8]; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-216;~~
 30 ~~90-6-331; 90-7-220; 90-9-306; and 90-14-107.~~

1 ~~(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,~~
2 ~~paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued~~
3 ~~pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of~~
4 ~~Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as~~
5 ~~determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the~~
6 ~~bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to~~
7 ~~sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for~~
8 ~~supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates~~
9 ~~July 1, 1995.)"~~

10
11 NEW SECTION. **Section 18. Codification instruction.** [Sections 1 through 16] are intended to be
12 codified as an integral part of Title 80, chapter 7, and the provisions of Title 80, chapter 7, apply to
13 [sections 1 through 16].

14
15 NEW SECTION. **Section 19. Severability.** If a part of [this act] is invalid, all valid parts that are
16 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
17 applications, the part remains in effect in all valid applications that are severable from the invalid
18 applications.

19
20 NEW SECTION. **Section 20. Effective dates.** (1) [Sections 1 through 5, 9, and 18 through 20,
21 19, and this section] are effective on passage and approval.

22 (2) [Sections 6 through 8 and 10 through 17] are effective January 1, 1996.

23 -END-

1 HOUSE BILL NO. 445

2 INTRODUCED BY GRADY, BECK, COBB, MASOLO, FOSTER, TASH, OHS, MESAROS, HAYNE,
3 M. HANSON, HIBBARD, HOLLAND, DEBRUYCKER, BROWN

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A NOXIOUS WEED SEED FREE FORAGE
6 PROGRAM AND ADVISORY COUNCIL; ESTABLISHING THE POWERS, DUTIES, AND RULEMAKING
7 AUTHORITY OF THE DEPARTMENT OF AGRICULTURE IN ADMINISTERING THE PROGRAM; AUTHORIZING
8 APPLICABLE FEES; ~~STATUTORILY APPROPRIATING PROGRAM FUNDS~~; PROVIDING FOR ENFORCEMENT
9 AUTHORITY AND FOR PENALTIES, ORDERS, INJUNCTIONS, AND EMBARGOES APPLICABLE TO THE
10 PROGRAM; AMENDING ~~SECTIONS~~ SECTION 7-22-2126 AND ~~17-7-502~~, MCA; AND PROVIDING
11 EFFECTIVE DATES."

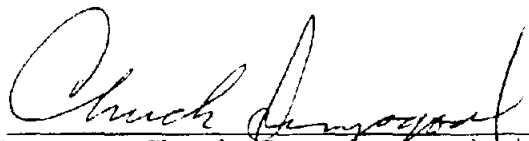
THERE ARE NO CHANGES IN THIS BILL AND IT WILL
NOT BE REPRINTED. PLEASE REFER TO SECOND
READING COPY (YELLOW) FOR COMPLETE TEXT.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 7, 1995

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration HB 445 (third reading copy -- blue), respectfully report that HB 445 be amended as follows and as so amended be concurred in.


Signed: 
Senator Chuck Swysgood, Chair

That such amendments read:

1. Page 9, line 24.
Following: "forage"
Insert: "as noxious weed seed free"

-END-

HB 445


Amd. Coord.
Sec. of Senate


Senator Carrying Bill

SENATE
531119SC.SPV

1 HOUSE BILL NO. 445

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 10 PROGRAM; AMENDING ~~SECTIONS~~ SECTION 7-22-2126 ~~AND 17-7-502~~, MCA; AND PROVIDING
 11 EFFECTIVE DATES."

12
13 STATEMENT OF INTENT

14 A statement of intent is required for this bill because rulemaking authority is granted to the
 15 department of agriculture to develop rules regarding implementation of the noxious weed seed free forage
 16 program. It is intended that the department, when adopting rules for the program and certification
 17 standards, processes, operations, agreements, and contracts; fees and the collection of fees; and
 18 inspections and investigation standards, ensure that the program and rules will be effective in preventing
 19 new introductions of noxious weed seed from forage in the state. The department shall base any related
 20 fees on the cost of managing and conducting the program. It is further intended that the program be
 21 conducted in a cooperative manner with federal, state, and local agencies, the regulated industry, and the
 22 public and that the department be allowed to enter into reciprocal agreements with other states or Canadian
 23 provinces as necessary for the proper administration of the program.

24
 25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

26
 27 NEW SECTION. Section 1. Short title. [Sections 1 through 16] may be cited as the "Noxious
 28 Weed Seed Free Forage Act".

29
 30 NEW SECTION. Section 2. Findings -- purpose. (1) The legislature finds that:

- 1 (a) natural resources of the state need to be protected from noxious weeds and their seeds;
- 2 (b) the movement of agricultural crops or commodities as livestock forage, bedding, mulch, and
3 related materials, including pellets, cubes, and other processed livestock feeds with noxious weed seeds,
4 causes new and expanding noxious weed infestations on private and government-managed lands, which
5 adversely impact agricultural, forest, recreational, and other lands;
- 6 (c) it is necessary to develop and implement a state forage and product noxious weed seed free
7 program in cooperation with federal, state, and local government, the university system, and private
8 enterprise;
- 9 (d) an educational program is needed to inform all citizens of the importance of the incentive to
10 market and handle forage that is free of noxious weed seeds;
- 11 (e) a cooperative forage and product distribution system with federal, state, local, and private land
12 manager participation is needed to prevent increased noxious weed infestations; and
- 13 (f) compliance standards involving the import or export of forage, in cooperation with county weed
14 districts and the department, are needed.

15 (2) The purpose of [sections 1 through 16] is to promote incentives to benefit the people of this
16 state and other states by producing and making available forage free of noxious weed seeds.

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23 standard range of variances or tolerances that forage production fields are free of the seeds of noxious
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25 seed free and to attach approved certification identification.

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2 (5) "Person" means a natural person, individual, firm, partnership, association, corporation,
3 company, joint-stock association, body politic, or organized group of persons, whether incorporated or not,
4 and any trustee, receiver, assignee, or similar representative.

5 (6) "Producer" means a person engaged in growing forage, a tenant personally engaged in growing
6 forage, or both the owner and the tenant jointly and includes a person, cooperative organization, trust,
7 sharecropper, and any other business entity, devices, and arrangements that grow forage that is proposed
8 to be certified as noxious weed seed free.

9 (7) "Sale" or "sell" means the selling, wholesaling, distributing, offering, exposing for sale,
10 advertising, exchanging, brokering, bartering, or giving away by any person within this state of any forage
11 as noxious weed seed free or certified or approved as noxious weed seed free.

12

13 NEW SECTION. Section 4. Composition of advisory council. (1) The director of the department
14 shall appoint an advisory council to provide advice to the department concerning the administration of
15 [sections 1 through 16].

16 (2) The advisory council must be composed of ~~nine~~ 10 VOTING members AND 2 EX OFFICIO,
17 NONVOTING MEMBERS, as follows:

18 (a) the director of the department or a designee, who shall serve as presiding officer;

19 ~~(b) the director of the Montana state university extension service or a designated representative;~~

20 ~~(c)(B) one member who is a producer~~ FOUR MEMBERS WHO ARE PRODUCERS of forage under
21 a certified forage noxious weed seed free program AND WHO REPRESENT DIFFERENT GEOGRAPHICAL
22 AREAS OF THE STATE;

23 ~~(d)(C)~~ one member involved in the processing of forage into pellets, cubes, or related products;

24 ~~(e)(D)~~ one member representing the livestock OR AGRICULTURAL industry;

25 ~~(f) one member representing the agricultural industry;~~

26 ~~(g)(E) one member~~ TWO MEMBERS representing county weed districts involved in a forage
27 certification program, who must be ~~a member~~ MEMBERS of the Montana weed control association AND
28 WHO REPRESENT DIFFERENT GEOGRAPHICAL AREAS OF THE STATE;

29 ~~(h)(F)~~ one member representing an outfitter's or guide's organization; ~~and~~

30 ~~(i) one member representing hunters, anglers, or recreationists.~~

1 (G) THE DIRECTOR OF THE MONTANA STATE UNIVERSITY EXTENSION SERVICE OR A
 2 DESIGNATED REPRESENTATIVE, WHO IS AN EX OFFICIO, NONVOTING MEMBER; AND

3 (H) THE DIRECTOR OF THE MONTANA STATE UNIVERSITY AGRICULTURAL EXTENSION
 4 SERVICE, WHO IS AN EX OFFICIO, NONVOTING MEMBER.

5 (3) THE MEMBERS SHALL SERVE STAGGERED 3-YEAR TERMS. A MEMBER MAY NOT SERVE
 6 FOR MORE THAN TWO CONSECUTIVE TERMS.

7
 8 NEW SECTION. **Section 5. Powers and duties of department.** The department may:

9 (1) provide for administration and enforcement of [sections 1 through 16];

10 (2) enter into contracts and agreements;

11 (3) authorize the purchase of all office equipment or supplies and incur all other reasonable and
 12 necessary expenses and obligations that are required for administering the provisions of [sections 1 through
 13 16];

14 (4) become a member of and purchase membership in trade organizations and subscribe to and
 15 purchase trade bulletins, journals, and other trade publications;

16 (5) plan and conduct publicity and promotional campaigns to increase the incentives to use
 17 Montana forage that is free of noxious weed seed and to make publicity and promotional contracts and
 18 other agreements as necessary;

19 (6) establish certification standards and processes for forage and byproducts of forage and
 20 determine if processed forage byproducts are noxious weed seed free, based upon field of origin or
 21 verification that the production process has destroyed the viability of noxious weed seeds;

22 (7) establish ~~forage inspection~~ fee assessments AND ACCEPT OTHER FUNDS to make the
 23 certification program financially self-supporting;

24 (8) establish a standard range of variances or tolerances for noxious weed seeds in different forage
 25 subject to certification as noxious weed seed free, based upon scientific and operational considerations;

26 (9) administer rules and orders to be adopted for the exercise of its power and the performance
 27 of its duties, in accordance with Title 2, chapter 4;

28 (10) cooperate with any local, state, or national organization or agency, whether voluntary or
 29 created by the law of any state or the United States government, and enter into contracts or agreements
 30 with organizations or agencies for carrying on a joint campaign of research, education, product protection,

1 publicity, reciprocity, and enforcement of [sections 1 through 16];

2 (11) hire employees and designate authorized agents to conduct certification inspections,
3 investigations, and sampling and to collect evidence of possible violations of [sections 1 through 16]; and

4 (12) accept grants, donations, and gifts from any source and expend those funds for any purpose
5 consistent with [sections 1 through 16], which may be specified as a condition of any grant, donation, or
6 gift.

7

8 **NEW SECTION. Section 6. Certification.** (1) A person shall make an annual application to the
9 department for certifying forage. The person shall comply with all certification standards and processes
10 and pay any required fees prior to receiving certification approval and identification markers for the forage.
11 If a production tonnage fee is established, the department may establish the method and time of payment.

12 (2) A person who wishes to deliver forage as noxious weed seed free into this state from out of
13 state shall notify the department and pay any application fee or other appropriate fee, including an
14 inspection fee, if required, prior to delivering the forage. The forage must be certified as noxious weed seed
15 free from the state or province of origin if the department approves the certification through a reciprocal
16 agreement or other process approved by the department. The department may waive some certification
17 documentation or fees based upon the provisions in a reciprocal agreement.

18

19 **NEW SECTION. Section 7. Fees.** (1) The department, BASED ON THE ADVICE OF THE
20 ADVISORY COUNCIL, may establish fees to support the cost of administering the noxious weed seed free
21 forage program. Fees may be established for:

22 (a) processing applications;

23 (b) per acre inspection of forage;

24 (c) inspection of facilities;

25 (d) minimum administration;

26 (e) inspection related to processing or manufacturing forage into pellets, cubes, and related
27 products;

28 ~~(f) production tonnage;~~

29 ~~(g)(F)~~ certification identification markers;

30 ~~(h)(G)~~ mileage and per diem; and

1 ~~(H)~~ import inspection.

2 (2) Fees, structures, and procedures must be recommended to the department by the advisory
3 council.

4
5 **NEW SECTION. Section 8. Deposit and disbursement of funds -- records -- investment.** (1) There
6 is a state noxious weed forage account in the state special revenue account. All funds received by the
7 department from fees or penalties collected or received under [sections 5 through 7, 13, and 14(1)], and
8 all other related funds received must be deposited in the state noxious weed forage account.

9 ~~(2) All funds referred to in subsection (1) are statutorily appropriated, as provided in 17-7-502, to~~
10 ~~the department and may be used only for the payment of expenses incurred in carrying out the provisions~~
11 ~~of [sections 1 through 16].~~ **THE DEPARTMENT MAY BY CONTRACT ALLOW FOR THE COLLECTION OF**
12 **FEES AUTHORIZED UNDER [SECTION 7]. A PORTION OF THE FEES COLLECTED MAY BE RETAINED BY**
13 **THE COLLECTOR, AND THE PORTION OF THE FEES ASSIGNED TO THE DEPARTMENT MUST BE**
14 **SUBMITTED TO THE DEPARTMENT. THE CONTRACT MUST REQUIRE:**

15 **(A) A RECORD OF THE NAME OF THE PERSON COLLECTING FEES;**

16 **(B) A RECORD OF FEES COLLECTED;**

17 **(C) A RECORD OF THE AMOUNTS SUBMITTED TO THE DEPARTMENT;**

18 **(D) A RECORD OF THE AMOUNT RETAINED BY THE COLLECTOR; AND**

19 **(E) THAT ALL RECORDS BE KEPT IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING**
20 **PRINCIPLES.**

21 (3) Funds received under [sections 5 through 7, 13, and 14(1)] that are not immediately required
22 for the purposes of [sections 1 through 16] must be invested under provisions of the unified investment
23 program established in Title 17, chapter 6, part 2. The income from the investments must be deposited
24 in the state special revenue fund and credited to the department.

25 (4) Funds received pursuant to [sections 1 through 16] are appropriated to the department **FOR**
26 **THE ADMINISTRATION OF THE NOXIOUS WEED SEED FREE FORAGE PROGRAM AND** for the purposes
27 of [sections 1 through 16].

28
29 **NEW SECTION. Section 9. Rules.** The department may, **BASED ON THE ADVICE OF THE**
30 **ADVISORY COUNCIL APPOINTED UNDER [SECTION 4],** adopt rules necessary to carry out its

1 responsibilities under [sections 1 through 16] in accordance with Title 2, chapter 4. The rules may include
2 but are not limited to:

3 (1) contracts and agreements;

4 (2) certification standards, processing, and sampling and equipment standards and operation;

5 (3) inspections and investigation procedures and standards;

6 (4) operations;

7 (5) records;

8 (6) application, inspection, production, import, certification identification, mileage, and per diem
9 fees and their collection;

10 (7) reciprocal agreements with other states or Canadian provinces; and

11 (8) penalties, stop sales, condemnation, and other orders.

12

13 **NEW SECTION.** **Section 10. Investigation and enforcement authority.** (1) In enforcing the
14 provisions of [sections 1 through 16], the department or its authorized agents, upon reasonable cause, may
15 enter any private or public premises, property, or vehicle with a warrant or with the consent of the
16 inhabitant or owner to inspect, sample, or investigate at reasonable times forage subject to certification or
17 sale as certified forage or as free of noxious weed seeds.

18 (2) All enforcement actions and orders must be made under the contested case provisions of Title
19 2, chapter 4, part 6.

20

21 **NEW SECTION.** **Section 11. Stop sale, use, or removal order.** When the department has
22 reasonable cause to believe that a person is selling, distributing, storing, transporting, or using forage in
23 violation of any of the provisions of [sections 1 through 16], a written stop sale, use, or removal order may
24 be issued to that person. If the person is not available for service of the order, the department may attach
25 the order to the forage and notify the person. The forage may not be sold, used, or removed until
26 compliance with the provisions of [sections 1 through 16] is achieved. The department may release the
27 order once compliance is achieved. The department may require that the forage be sold or used only as
28 an uncertified forage or delivered back to the seller, or the department may order condemnation of any
29 forage that does not meet the requirement of [sections 1 through 16] or other alternatives established by
30 rule. The department, upon finding that the person responsible for the embargoed forage has failed to

1 comply with the order in any respect, may petition the district court of the first judicial district for
2 enforcement of the order.

3
4 **NEW SECTION. Section 12. Prohibited acts.** (1) It is unlawful for a person to certify or sell as
5 certified or as noxious weed seed free any forage as free of noxious weed seed within this state, unless
6 the forage is identified under a department-approved process as "Montana certified" and the forage meets
7 all the requirements of [sections 1 through 16]. A person may not designate forage as certified or use any
8 other title, designation, words, letters, abbreviations, sign, card, or identifier tending to indicate that the
9 forage is certified unless the forage meets all the requirements of [sections 1 through 16].

10 (2) Forage certified under a reciprocal agreement between the department and another state or
11 Canadian province and identified according to approved certification standards to be shipped into the state
12 or shipped to another state or province must meet the requirements of [sections 1 through 16].

13 (3) All forage products used by public utilities and local, county, state, or federal agencies,
14 including but not limited to mulches, bedding materials, and erosion control barriers, must be certified as
15 noxious weed seed free. All seeds used for reclamation purposes by public utilities and local, county, state,
16 or federal agencies must be free of noxious weed seeds and be certified seed according to Title 80, chapter
17 5.

18
19 **NEW SECTION. Section 13. Penalty for nonpayment of fees.** In addition to the penalties set out
20 in [section 14], a person who fails to pay or improperly pays any fee assessment or fee assessed under the
21 provisions of [sections 1 through 16] is subject to a penalty of \$100 or double the assessment, whichever
22 is greater, including the original fee. The penalty must be paid to the department and deposited as provided
23 in [section 8]. A certification issued to a person who fails to pay or improperly pays any fee assessment
24 or fee assessed under the provisions of [sections 1 through 16] is invalid until the original fee and penalty
25 are paid to the department.

26
27 **NEW SECTION. Section 14. Penalties.** A person who violates or aids in a violation of any of the
28 provisions of [sections 1 through 16] or any rules or orders of the department adopted under [sections 1
29 through 16] is subject to the following penalties:

30 (1) a civil penalty of not more than \$1,000 for each offense. Assessment of a civil penalty by the

1 department may be made in conjunction with any other warning, order, or administrative action authorized
2 by [sections 1 through 16] that is issued by the department.

3 (2) a misdemeanor penalty of not less than \$100 or more than \$1,500 or up to 6 months'
4 imprisonment, or both, if the person is convicted in district court.

5

6 **NEW SECTION. Section 15. Injunction authorized.** The department may commence a civil action
7 in the district court of the first judicial district seeking appropriate relief, including a permanent or temporary
8 injunction, for a violation of [sections 1 through 16].

9

10 **NEW SECTION. Section 16. Embargo.** Upon receiving a report from a district weed board, as
11 provided in 7-22-2126, that forage is subject to embargo and upon verification of a violation of [sections
12 1 through 16], the department shall enforce the embargo throughout the state and issue appropriate stop
13 sale orders as provided in [section 11].

14

15 **Section 17.** Section 7-22-2126, MCA, is amended to read:

16 **"7-22-2126. Embargo. (1)** The board may establish voluntary embargo programs to reduce the
17 spread of noxious weeds within the district or the introduction of noxious weeds into the district.

18 **(2)** The board shall establish a special embargo program for the movement of forage, as defined
19 in [section 3], into or out of the county. The board may implement an embargo upon confirmation of a
20 violation, based upon complaint investigations, requests for investigation by the department, or through
21 county investigations, if the forage has not been certified by the state and is being sold as noxious weed
22 seed free, as defined in [section 3].

23 **(3)** A person in possession of the forage that is not in compliance with [sections 1 through 16] may
24 not move or dispose of the forage AS NOXIOUS WEED SEED FREE that is subject to embargo until written
25 permission is obtained from the board. If the forage that is subject to embargo is found to have met all of
26 the requirements of the state certification program and the department verifies compliance with the
27 program, the board shall release the embargo. The board may also release the forage under the following
28 conditions:

29 (a) verification of guaranteed delivery back to the original producer, as defined in [section 3];

30 (b) burning or disposal of the forage in a manner acceptable to the board; or

1 (c) other alternatives approved by the board.

2 (4) The board shall report all embargoes issued and the final resolution of an embargo imposed
 3 pursuant to a violation of [sections 1 through 16] to the department within 48 hours.

4 (5) The person in possession of forage subject to embargo shall comply with the conditions
 5 approved by the board within 30 days. If resolution is not accomplished, the board may condemn the
 6 forage and implement through its employees any of the conditions set forth in this section. If the board
 7 proceeds with correction of these conditions after 30 days, all actual expenses incurred and documented
 8 by the board are payable by the producer unless the person in possession of the forage also has an interest
 9 in the forage."

10
 11 ~~Section 19. Section 17-7-502, MCA, is amended to read:~~

12 ~~"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory~~
 13 ~~appropriation is an appropriation made by permanent law that authorizes spending by a state agency~~
 14 ~~without the need for a biennial legislative appropriation or budget amendment.~~

15 ~~(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply~~
 16 ~~with both of the following provisions:~~

17 ~~(a) The law containing the statutory authority must be listed in subsection (3).~~

18 ~~(b) The law or portion of the law making a statutory appropriation must specifically state that a~~
 19 ~~statutory appropriation is made as provided in this section.~~

20 ~~(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;~~
 21 ~~2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;~~
 22 ~~15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410;~~
 23 ~~16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409;~~
 24 ~~17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513;~~
 25 ~~19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503;~~
 26 ~~23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402;~~
 27 ~~27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504;~~
 28 ~~44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205;~~
 29 ~~75-1-1101; 75-5-507; 75-5-1108; 76-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416;~~
 30 ~~[section 8]; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215;~~

1 ~~90-6-331; 90-7-220; 90-9-306; and 90-14-107.~~

2 ~~(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,~~
 3 ~~paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued~~
 4 ~~pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of~~
 5 ~~Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as~~
 6 ~~determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the~~
 7 ~~bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to~~
 8 ~~sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for~~
 9 ~~supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates~~
 10 ~~July 1, 1995.)"~~

11

12 **NEW SECTION. Section 18. Codification instruction.** [Sections 1 through 16] are intended to be
 13 codified as an integral part of Title 80, chapter 7, and the provisions of Title 80, chapter 7, apply to
 14 [sections 1 through 16].

15

16 **NEW SECTION. Section 19. Severability.** If a part of [this act] is invalid, all valid parts that are
 17 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
 18 applications, the part remains in effect in all valid applications that are severable from the invalid
 19 applications.

20

21 **NEW SECTION. Section 20. Effective dates.** (1) [Sections 1 through 5, 9, and 18 through 20,
 22 19, and this section] are effective on passage and approval.

23 (2) [Sections 6 through 8 and 10 through 17] are effective January 1, 1996.

24

-END-

GOVERNOR'S AMENDMENTS TO
HOUSE BILL NO. 445
(REFERENCE COPY)
April 11, 1995

1. Page 4, lines 3 and 4.

Strike: "EXTENSION" on line 3 through "SERVICE" on line 4.

Insert: "experiment station or a designated representative"

2. Page 5, line 19.

Page 6, line 29.

Strike: "BASED ON"

Insert: "with"

HB 445

1 HOUSE BILL NO. 445

2 INTRODUCED BY GRADY, BECK, COBB, MASOLO, FOSTER, TASH, OHS, MESAROS, HAYNE,
3 M. HANSON, HIBBARD, HOLLAND, DEBRUYCKER, BROWN

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A NOXIOUS WEED SEED FREE FORAGE
6 PROGRAM AND ADVISORY COUNCIL; ESTABLISHING THE POWERS, DUTIES, AND RULEMAKING
7 AUTHORITY OF THE DEPARTMENT OF AGRICULTURE IN ADMINISTERING THE PROGRAM; AUTHORIZING
8 APPLICABLE FEES; ~~STATUTORILY APPROPRIATING PROGRAM FUNDS~~; PROVIDING FOR ENFORCEMENT
9 AUTHORITY AND FOR PENALTIES, ORDERS, INJUNCTIONS, AND EMBARGOES APPLICABLE TO THE
10 PROGRAM; AMENDING ~~SECTIONS~~ SECTION 7-22-2126 ~~AND 17-7-502~~, MCA; AND PROVIDING
11 EFFECTIVE DATES."

12
13 STATEMENT OF INTENT

14 A statement of intent is required for this bill because rulemaking authority is granted to the
15 department of agriculture to develop rules regarding implementation of the noxious weed seed free forage
16 program. It is intended that the department, when adopting rules for the program and certification
17 standards, processes, operations, agreements, and contracts; fees and the collection of fees; and
18 inspections and investigation standards, ensure that the program and rules will be effective in preventing
19 new introductions of noxious weed seed from forage in the state. The department shall base any related
20 fees on the cost of managing and conducting the program. It is further intended that the program be
21 conducted in a cooperative manner with federal, state, and local agencies, the regulated industry, and the
22 public and that the department be allowed to enter into reciprocal agreements with other states or Canadian
23 provinces as necessary for the proper administration of the program.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

26
27 NEW SECTION. **Section 1. Short title.** [Sections 1 through 16] may be cited as the "Noxious
28 Weed Seed Free Forage Act".

29
30 NEW SECTION. **Section 2. Findings -- purpose.** (1) The legislature finds that:

- 1 (a) natural resources of the state need to be protected from noxious weeds and their seeds;
- 2 (b) the movement of agricultural crops or commodities as livestock forage, bedding, mulch, and
3 related materials, including pellets, cubes, and other processed livestock feeds with noxious weed seeds,
4 causes new and expanding noxious weed infestations on private and government-managed lands, which
5 adversely impact agricultural, forest, recreational, and other lands;
- 6 (c) it is necessary to develop and implement a state forage and product noxious weed seed free
7 program in cooperation with federal, state, and local government, the university system, and private
8 enterprise;
- 9 (d) an educational program is needed to inform all citizens of the importance of the incentive to
10 market and handle forage that is free of noxious weed seeds;
- 11 (e) a cooperative forage and product distribution system with federal, state, local, and private land
12 manager participation is needed to prevent increased noxious weed infestations; and
- 13 (f) compliance standards involving the import or export of forage, in cooperation with county weed
14 districts and the department, are needed.
- 15 (2) The purpose of [sections 1 through 16] is to promote incentives to benefit the people of this
16 state and other states by producing and making available forage free of noxious weed seeds.
17
- 18 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 16], the following
19 definitions apply:
- 20 (1) "Advisory council" means the Montana noxious weed seed free forage advisory council. Except
21 as provided in [section 4], the council is subject to the provisions of 2-15-122.
- 22 (2) "Certification" means the state-approved and documented process of determining within a
23 standard range of variances or tolerances that forage production fields are free of the seeds of noxious
24 weeds, as defined in 7-22-2101(7)(a)(i), which process allows a person to sell the forage as noxious weed
25 seed free and to attach approved certification identification.
- 26 (3) "Forage" means any crop, including alfalfa, grass, small grains, straw, and similar crops and
27 commodities, that is grown, harvested, and sold for livestock forage, bedding material, or mulch or related
28 uses and the byproducts of those crops or commodities that have been processed into pellets, cubes, or
29 related products.
- 30 (4) "Noxious weed seed free" means that forage has an absence of noxious weed seeds within a

1 standardized range of variances or tolerances established by department rule.

2 (5) "Person" means a natural person, individual, firm, partnership, association, corporation,
3 company, joint-stock association, body politic, or organized group of persons, whether incorporated or not,
4 and any trustee, receiver, assignee, or similar representative.

5 (6) "Producer" means a person engaged in growing forage, a tenant personally engaged in growing
6 forage, or both the owner and the tenant jointly and includes a person, cooperative organization, trust,
7 sharecropper, and any other business entity, devices, and arrangements that grow forage that is proposed
8 to be certified as noxious weed seed free.

9 (7) "Sale" or "sell" means the selling, wholesaling, distributing, offering, exposing for sale,
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11 as noxious weed seed free or certified or approved as noxious weed seed free.

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13 **NEW SECTION. Section 4. Composition of advisory council.** (1) The director of the department
14 shall appoint an advisory council to provide advice to the department concerning the administration of
15 [sections 1 through 16].

16 (2) The advisory council must be composed of ~~nine~~ 10 VOTING members AND 2 EX OFFICIO,
17 NONVOTING MEMBERS, as follows:

18 (a) the director of the department or a designee, who shall serve as presiding officer;

19 ~~(b) the director of the Montana state university extension service or a designated representative;~~

20 ~~(c)(B) one member who is a producer~~ FOUR MEMBERS WHO ARE PRODUCERS of forage under
21 a certified forage noxious weed seed free program AND WHO REPRESENT DIFFERENT GEOGRAPHICAL
22 AREAS OF THE STATE;

23 ~~(d)(C)~~ one member involved in the processing of forage into pellets, cubes, or related products;

24 ~~(e)(D)~~ one member representing the livestock OR AGRICULTURAL industry;

25 ~~(f) one member representing the agricultural industry;~~

26 ~~(g)(E) one member~~ TWO MEMBERS representing county weed districts involved in a forage
27 certification program, who must be ~~a member~~ MEMBERS of the Montana weed control association AND
28 WHO REPRESENT DIFFERENT GEOGRAPHICAL AREAS OF THE STATE;

29 ~~(h)(F)~~ one member representing an outfitter's or guide's organization; ~~and~~

30 ~~(i) one member representing hunters, anglers, or recreationists.~~

1 (G) THE DIRECTOR OF THE MONTANA STATE UNIVERSITY EXTENSION SERVICE OR A
 2 DESIGNATED REPRESENTATIVE, WHO IS AN EX OFFICIO, NONVOTING MEMBER; AND

3 (H) THE DIRECTOR OF THE MONTANA STATE UNIVERSITY AGRICULTURAL EXTENSION SERVICE
 4 EXPERIMENT STATION OR A DESIGNATED REPRESENTATIVE, WHO IS AN EX OFFICIO, NONVOTING
 5 MEMBER.

6 (3) THE MEMBERS SHALL SERVE STAGGERED 3-YEAR TERMS. A MEMBER MAY NOT SERVE
 7 FOR MORE THAN TWO CONSECUTIVE TERMS.

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 9 **NEW SECTION. Section 5. Powers and duties of department.** The department may:

10 (1) provide for administration and enforcement of [sections 1 through 16];

11 (2) enter into contracts and agreements;

12 (3) authorize the purchase of all office equipment or supplies and incur all other reasonable and
 13 necessary expenses and obligations that are required for administering the provisions of [sections 1 through
 14 16];

15 (4) become a member of and purchase membership in trade organizations and subscribe to and
 16 purchase trade bulletins, journals, and other trade publications;

17 (5) plan and conduct publicity and promotional campaigns to increase the incentives to use
 18 Montana forage that is free of noxious weed seed and to make publicity and promotional contracts and
 19 other agreements as necessary;

20 (6) establish certification standards and processes for forage and byproducts of forage and
 21 determine if processed forage byproducts are noxious weed seed free, based upon field of origin or
 22 verification that the production process has destroyed the viability of noxious weed seeds;

23 (7) establish ~~forage inspection~~ fee assessments **AND ACCEPT OTHER FUNDS** to make the
 24 certification program financially self-supporting;

25 (8) establish a standard range of variances or tolerances for noxious weed seeds in different forage
 26 subject to certification as noxious weed seed free, based upon scientific and operational considerations;

27 (9) administer rules and orders to be adopted for the exercise of its power and the performance
 28 of its duties, in accordance with Title 2, chapter 4;

29 (10) cooperate with any local, state, or national organization or agency, whether voluntary or
 30 created by the law of any state or the United States government, and enter into contracts or agreements

1 with organizations or agencies for carrying on a joint campaign of research, education, product protection,
2 publicity, reciprocity, and enforcement of [sections 1 through 16];

3 (11) hire employees and designate authorized agents to conduct certification inspections,
4 investigations, and sampling and to collect evidence of possible violations of [sections 1 through 16]; and

5 (12) accept grants, donations, and gifts from any source and expend those funds for any purpose
6 consistent with [sections 1 through 16], which may be specified as a condition of any grant, donation, or
7 gift.

8

9 **NEW SECTION. Section 6. Certification.** (1) A person shall make an annual application to the
10 department for certifying forage. The person shall comply with all certification standards and processes
11 and pay any required fees prior to receiving certification approval and identification markers for the forage.
12 If a production tonnage fee is established, the department may establish the method and time of payment.

13 (2) A person who wishes to deliver forage as noxious weed seed free into this state from out of
14 state shall notify the department and pay any application fee or other appropriate fee, including an
15 inspection fee, if required, prior to delivering the forage. The forage must be certified as noxious weed seed
16 free from the state or province of origin if the department approves the certification through a reciprocal
17 agreement or other process approved by the department. The department may waive some certification
18 documentation or fees based upon the provisions in a reciprocal agreement.

19

20 **NEW SECTION. Section 7. Fees.** (1) The department, ~~BASED ON WITH THE ADVICE OF THE~~
21 ADVISORY COUNCIL, may establish fees to support the cost of administering the noxious weed seed free
22 forage program. Fees may be established for:

- 23 (a) processing applications;
24 (b) per acre inspection of forage;
25 (c) inspection of facilities;
26 (d) minimum administration;
27 (e) inspection related to processing or manufacturing forage into pellets, cubes, and related
28 products;

29 ~~(f) production tonnage;~~

30 ~~(g)~~ (F) certification identification markers;

1 ~~##(G)~~ mileage and per diem; and

2 ~~##(H)~~ import inspection.

3 (2) Fees, structures, and procedures must be recommended to the department by the advisory
4 council.

5

6 **NEW SECTION. Section 8. Deposit and disbursement of funds -- records -- investment.** (1) There
7 is a state noxious weed forage account in the state special revenue account. All funds received by the
8 department from fees or penalties collected or received under [sections 5 through 7, 13, and 14(1)], and
9 all other related funds received must be deposited in the state noxious weed forage account.

10 (2) ~~All funds referred to in subsection (1) are statutorily appropriated, as provided in 17-7-502, to~~
11 ~~the department and may be used only for the payment of expenses incurred in carrying out the provisions~~
12 ~~of [sections 1 through 16].~~ THE DEPARTMENT MAY BY CONTRACT ALLOW FOR THE COLLECTION OF
13 FEES AUTHORIZED UNDER [SECTION 7]. A PORTION OF THE FEES COLLECTED MAY BE RETAINED BY
14 THE COLLECTOR, AND THE PORTION OF THE FEES ASSIGNED TO THE DEPARTMENT MUST BE
15 SUBMITTED TO THE DEPARTMENT. THE CONTRACT MUST REQUIRE:

16 (A) A RECORD OF THE NAME OF THE PERSON COLLECTING FEES;

17 (B) A RECORD OF FEES COLLECTED;

18 (C) A RECORD OF THE AMOUNTS SUBMITTED TO THE DEPARTMENT;

19 (D) A RECORD OF THE AMOUNT RETAINED BY THE COLLECTOR; AND

20 (E) THAT ALL RECORDS BE KEPT IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING
21 PRINCIPLES.

22 (3) Funds received under [sections 5 through 7, 13, and 14(1)] that are not immediately required
23 for the purposes of [sections 1 through 16] must be invested under provisions of the unified investment
24 program established in Title 17, chapter 6, part 2. The income from the investments must be deposited
25 in the state special revenue fund and credited to the department.

26 (4) Funds received pursuant to [sections 1 through 16] are appropriated to the department FOR
27 THE ADMINISTRATION OF THE NOXIOUS WEED SEED FREE FORAGE PROGRAM AND for the purposes
28 of [sections 1 through 16].

29

30 **NEW SECTION. Section 9. Rules.** The department may, BASED ON WITH THE ADVICE OF THE

1 ADVISORY COUNCIL APPOINTED UNDER [SECTION 4], adopt rules necessary to carry out its
2 responsibilities under [sections 1 through 16] in accordance with Title 2, chapter 4. The rules may include
3 but are not limited to:

- 4 (1) contracts and agreements;
- 5 (2) certification standards, processing, and sampling and equipment standards and operation;
- 6 (3) inspections and investigation procedures and standards;
- 7 (4) operations;
- 8 (5) records;
- 9 (6) application, inspection, production, import, certification identification, mileage, and per diem
10 fees and their collection;
- 11 (7) reciprocal agreements with other states or Canadian provinces; and
- 12 (8) penalties, stop sales, condemnation, and other orders.

13
14 NEW SECTION. Section 10. Investigation and enforcement authority. (1) In enforcing the
15 provisions of [sections 1 through 16], the department or its authorized agents, upon reasonable cause, may
16 enter any private or public premises, property, or vehicle with a warrant or with the consent of the
17 inhabitant or owner to inspect, sample, or investigate at reasonable times forage subject to certification or
18 sale as certified forage or as free of noxious weed seeds.

19 (2) All enforcement actions and orders must be made under the contested case provisions of Title
20 2, chapter 4, part 6.

21
22 NEW SECTION. Section 11. Stop sale, use, or removal order. When the department has
23 reasonable cause to believe that a person is selling, distributing, storing, transporting, or using forage in
24 violation of any of the provisions of [sections 1 through 16], a written stop sale, use, or removal order may
25 be issued to that person. If the person is not available for service of the order, the department may attach
26 the order to the forage and notify the person. The forage may not be sold, used, or removed until
27 compliance with the provisions of [sections 1 through 16] is achieved. The department may release the
28 order once compliance is achieved. The department may require that the forage be sold or used only as
29 an uncertified forage or delivered back to the seller, or the department may order condemnation of any
30 forage that does not meet the requirement of [sections 1 through 16] or other alternatives established by

1 rule. The department, upon finding that the person responsible for the embargoed forage has failed to
2 comply with the order in any respect, may petition the district court of the first judicial district for
3 enforcement of the order.

4

5 **NEW SECTION. Section 12. Prohibited acts.** (1) It is unlawful for a person to certify or sell as
6 certified or as noxious weed seed free any forage as free of noxious weed seed within this state, unless
7 the forage is identified under a department-approved process as "Montana certified" and the forage meets
8 all the requirements of [sections 1 through 16]. A person may not designate forage as certified or use any
9 other title, designation, words, letters, abbreviations, sign, card, or identifier tending to indicate that the
10 forage is certified unless the forage meets all the requirements of [sections 1 through 16].

11 (2) Forage certified under a reciprocal agreement between the department and another state or
12 Canadian province and identified according to approved certification standards to be shipped into the state
13 or shipped to another state or province must meet the requirements of [sections 1 through 16].

14 (3) All forage products used by public utilities and local, county, state, or federal agencies,
15 including but not limited to mulches, bedding materials, and erosion control barriers, must be certified as
16 noxious weed seed free. All seeds used for reclamation purposes by public utilities and local, county, state,
17 or federal agencies must be free of noxious weed seeds and be certified seed according to Title 80, chapter
18 5.

19

20 **NEW SECTION. Section 13. Penalty for nonpayment of fees.** In addition to the penalties set out
21 in [section 14], a person who fails to pay or improperly pays any fee assessment or fee assessed under the
22 provisions of [sections 1 through 16] is subject to a penalty of \$100 or double the assessment, whichever
23 is greater, including the original fee. The penalty must be paid to the department and deposited as provided
24 in [section 8]. A certification issued to a person who fails to pay or improperly pays any fee assessment
25 or fee assessed under the provisions of [sections 1 through 16] is invalid until the original fee and penalty
26 are paid to the department.

27

28 **NEW SECTION. Section 14. Penalties.** A person who violates or aids in a violation of any of the
29 provisions of [sections 1 through 16] or any rules or orders of the department adopted under [sections 1
30 through 16] is subject to the following penalties:

1 (1) a civil penalty of not more than \$1,000 for each offense. Assessment of a civil penalty by the
2 department may be made in conjunction with any other warning, order, or administrative action authorized
3 by [sections 1 through 16] that is issued by the department.

4 (2) a misdemeanor penalty of not less than \$100 or more than \$1,500 or up to 6 months'
5 imprisonment, or both, if the person is convicted in district court.

6
7 **NEW SECTION. Section 15. Injunction authorized.** The department may commence a civil action
8 in the district court of the first judicial district seeking appropriate relief, including a permanent or temporary
9 injunction, for a violation of [sections 1 through 16].

10
11 **NEW SECTION. Section 16. Embargo.** Upon receiving a report from a district weed board, as
12 provided in 7-22-2126, that forage is subject to embargo and upon verification of a violation of [sections
13 1 through 16], the department shall enforce the embargo throughout the state and issue appropriate stop
14 sale orders as provided in [section 11].

15
16 **Section 17.** Section 7-22-2126, MCA, is amended to read:

17 "7-22-2126. **Embargo.** (1) The board may establish voluntary embargo programs to reduce the
18 spread of noxious weeds within the district or the introduction of noxious weeds into the district.

19 (2) The board shall establish a special embargo program for the movement of forage, as defined
20 in [section 3], into or out of the county. The board may implement an embargo upon confirmation of a
21 violation, based upon complaint investigations, requests for investigation by the department, or through
22 county investigations, if the forage has not been certified by the state and is being sold as noxious weed
23 seed free, as defined in [section 3].

24 (3) A person in possession of the forage that is not in compliance with [sections 1 through 16] may
25 not move or dispose of the forage AS NOXIOUS WEED SEED FREE that is subject to embargo until written
26 permission is obtained from the board. If the forage that is subject to embargo is found to have met all of
27 the requirements of the state certification program and the department verifies compliance with the
28 program, the board shall release the embargo. The board may also release the forage under the following
29 conditions:

30 (a) verification of guaranteed delivery back to the original producer, as defined in [section 3];

1 (b) burning or disposal of the forage in a manner acceptable to the board; or

2 (c) other alternatives approved by the board.

3 (4) The board shall report all embargoes issued and the final resolution of an embargo imposed
4 pursuant to a violation of [sections 1 through 16] to the department within 48 hours.

5 (5) The person in possession of forage subject to embargo shall comply with the conditions
6 approved by the board within 30 days. If resolution is not accomplished, the board may condemn the
7 forage and implement through its employees any of the conditions set forth in this section. If the board
8 proceeds with correction of these conditions after 30 days, all actual expenses incurred and documented
9 by the board are payable by the producer unless the person in possession of the forage also has an interest
10 in the forage."

11
12 ~~Section 18. Section 17-7-502, MCA, is amended to read:~~

13 ~~"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory~~
14 ~~appropriation is an appropriation made by permanent law that authorizes spending by a state agency~~
15 ~~without the need for a biennial legislative appropriation or budget amendment.~~

16 ~~(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply~~
17 ~~with both of the following provisions:~~

18 ~~(a) The law containing the statutory authority must be listed in subsection (3).~~

19 ~~(b) The law or portion of the law making a statutory appropriation must specifically state that a~~
20 ~~statutory appropriation is made as provided in this section.~~

21 ~~(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-106;~~
22 ~~2-18-812; 3-5-801; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;~~
23 ~~15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410;~~
24 ~~16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409;~~
25 ~~17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513;~~
26 ~~19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503;~~
27 ~~23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402;~~
28 ~~27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504;~~
29 ~~44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-206;~~
30 ~~75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416;~~

1 ~~[section 8]; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215;~~
 2 ~~90-6-331; 90-7-220; 90-9-306; and 90-14-107.~~

3 ~~(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,~~
 4 ~~paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued~~
 5 ~~pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of~~
 6 ~~Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as~~
 7 ~~determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the~~
 8 ~~bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to~~
 9 ~~sec. 7, Ch. 567, L. 1991, the inclusion of 18-6-708 terminates upon death of last recipient eligible for~~
 10 ~~supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates~~
 11 ~~July 1, 1995.)"~~

12

13 **NEW SECTION. Section 18. Codification instruction.** [Sections 1 through 16] are intended to be
 14 codified as an integral part of Title 80, chapter 7, and the provisions of Title 80, chapter 7, apply to
 15 [sections 1 through 16].

16

17 **NEW SECTION. Section 19. Severability.** If a part of [this act] is invalid, all valid parts that are
 18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
 19 applications, the part remains in effect in all valid applications that are severable from the invalid
 20 applications.

21

22 **NEW SECTION. Section 20. Effective dates.** (1) [Sections 1 through 5, 9, and 18 through 20,
 23 19, and this section] are effective on passage and approval.

24 (2) [Sections 6 through 8 and 10 through 17] are effective January 1, 1996.

25

-END-