

Introduced by

1 A BILL for an Act to amend and reenact sections 63-01.1-01, 63-01.1-02, 63-01.1-03,
2 63-01.1-03.1, 63-01.1-03.2, 63-01.1-04, 63-01.1-04.1, 63-01.1-04.3, 63-01.1-04.4, 63-01.1-05,
3 63-01.1-05.1, 63-01.1-06, 63-01.1-07.1, 63-01.1-07.2, 63-01.1-07.3, 63-01.1-07.4,
4 63-01.1-07.5, 63-01.1-07.6, 63-01.1-08, 63-01.1-09, 63-01.1-10.1, 63-01.1-12, 63-01.1-12.1,
5 63-01.1-12.2, 63-01.1-13, 63-01.1-14, 63-01.1-15, 63-01.1-18, 63-01.1-19, 63-01.1-20,
6 63-01.1-21, 63-01.1-22, 63-01.1-23, 63-01.1-24, and 63-01.1-25 of the North Dakota Century
7 Code, relating to noxious weed control and pest control.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Section 63-01.1-01 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **63-01.1-01. Control ~~and eradication~~ of noxious weeds - Responsibility.** ~~Every Any~~
12 ~~person in charge of or in possession of~~ owning land in this state, ~~whether as landowner, lessee,~~
13 ~~renter, or tenant, under statutory authority or otherwise,~~ shall control ~~or eradicate~~ noxious
14 weeds on those lands.

NOTE: Proposed changes to this section clarify that the landowner has the ultimate legal responsibility to comply with the requirements of this chapter.

Proposed changes to this section recognize that for certain noxious weeds, eradication is a virtual impossibility. This change is carried forth throughout the chapter. The changes also recognize that eradication is a form of control. If a person "eradicates" a weed, i.e., destroys it so that it is not viable, the person has succeeded in controlling its spread. If a person merely "controls" a weed, the person has prevented its spread by seed or propagating part, but has not necessarily destroyed the plant so that it is not viable.

15 **SECTION 2. AMENDMENT.** Section 63-01.1-02 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **63-01.1-02. Definitions.** As used in this chapter:

1. "Board member area" means a geographical area within the county from which a member of the weed board is appointed.
2. "City weed control officer" means an individual designated by a city weed board to be responsible for the operation and enforcement of this chapter within the city.
3. "Commissioner" means the agriculture commissioner or the commissioner's designee.
4. "Control" means to prevent the spread of any noxious weed by seed or ~~any~~ other propagating part or to suppress, ~~eradicate~~, prevent, or retard the spread of a pest.
5. ~~"Control authority" means the commissioner, a county weed board, a county weed control officer, a city weed board, or a city weed control officer.~~
6. "County weed control officer" means an individual designated by the county weed board to be responsible for the operation and enforcement of this chapter within ~~each~~ the county.
7. ~~"Eradicate" means to destroy a plant or a pest so that it is not viable.~~
8. ~~"Highway, street, or road" means a public way for purposes of vehicular travel, including the entire area within the right of way. A highway in a rural area may be called a "road" and a highway in an urban area may be called a "street".~~
9. ~~"Landowner" means any owner of federal, state, municipal, or private land, under statutory authority or otherwise. The term does not include a lessee, renter, tenant, operator, or an owner of any easement or right of way.~~
40. 6. "Noxious weed" means a plant propagated by either seed or vegetative parts and ~~which is determined by the commissioner after consulting with the North Dakota state university extension service or which is determined by a county weed board after consulting with the county extension agent to be injurious to public health, crops, livestock, land, or other property by:~~
 - a. The commissioner after consultation with the North Dakota state university extension service;
 - b. A county weed board in accordance with section 63-01.1-04.4; or
 - c. A city weed board in accordance with section 63-01.1-07.4.

- 1 11. ~~"Operator" means the person responsible for farming operations or other~~
2 ~~operations being performed on the land, whether for self benefit, or for the benefit~~
3 ~~of the landowner or another.~~
- 4 42. 7. ~~"Pest" means any pest defined in section 4-33-01 and a prairie dog:~~
5 a. ~~Any invertebrate animal, pathogen, parasitic plant, or organism that can cause~~
6 ~~damage to:~~
7 (1) ~~A plant;~~
8 (2) ~~A part of a plant;~~
9 (3) ~~A product of a plant; or~~
10 b. ~~A prairie dog.~~
- 11 43. 8. ~~"Township road" means an improved public road that is not located in:~~
12 a. ~~Located outside an incorporated city and not;~~
13 b. ~~Not designated as part of a county, state, or federal-aid road system, but~~
14 ~~constructed; and~~
15 c. ~~Constructed, maintained, graded, and drained by the township, or by the~~
16 ~~county in the case of an unorganized township. A township road includes a~~
17 ~~street in an unincorporated townsite; does not have to be surfaced; does not~~
18 ~~include a sodded road; and includes a section line if that section line is~~
19 ~~graded, drained, and a maintained road if the township is unorganized.~~

NOTE: A proposed change removes the definition of a "control authority." The phrase "control authority" is replaced within the chapter by the title of the individual responsible for carrying out a particular duty or power.

A proposed change removes the definition of a "highway, street, or road." Those are commonly understood terms.

A proposed change removes the definition of a "landowner." That is a commonly understood term.

A proposed change to the definition of a "noxious weed" recognizes that a weed may be declared to be noxious not just by two entities but by three--the Agriculture Commissioner, a county weed board, and a city weed board.

In order for a weed to be declared noxious, consultation is required with the NDSU Extension Service. Is this the appropriate and sole entity? Should the consultation be with both the NDSU Extension Service and the Agricultural Experiment Station?

A proposed change removes the definition of an "operator." That is a commonly understood term.

A proposed change to the definition of a "pest" actually uses the terminology found in North Dakota Century Code (NDCC) Section 4-33-01, as opposed to relying merely on the cross-reference. This is not a substantive change in the definition. However, whether or not reference to a "parasitic plant" should be included in the definition of a "pest" is questionable.

The current definition of a "township road" includes several descriptive phrases governing what is and is not a township road. The proposed change attempts to simplify the language used to describe a township road.

SECTION 3. AMENDMENT. Section 63-01.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**63-01.1-03. State Noxious weed control authority - ~~Agriculture commissioner~~
Commissioner - Duties.** The commissioner shall:

- ~~1. Enforce this chapter;~~
- ~~2. Cooperate with other weed control authorities and law enforcement officers;~~
- ~~3. Determine which weeds are noxious after consulting with the North Dakota state university extension service;~~
- ~~4. 2. Compile and keep a list of noxious weeds;~~
- ~~5. Establish procedures and prepare and supply all notices, posters, forms, and other documents needed in carrying out this chapter;~~
- ~~6. Prepare all notices and posters featuring the noxious weed list, rules, dates for controlling noxious weeds, and other compliance requirements, for printing in official newspapers or for posting at least annually;~~
- ~~7. Encourage the North Dakota state university extension service to disseminate information and to conduct educational campaigns with respect to the control and eradication of noxious weeds and pests;~~
- ~~8. 3. Except as otherwise provided, forward all ~~written~~ signed complaints to the proper weed control authority; and~~
- ~~9. 4. Call an annual meeting of all weed control officers, either statewide or by areas, to review the intent, operation, procedures, and accomplishments under this chapter and invite all weed control authority members to attend; and~~
- ~~10. Encourage the cooperation of federal and state agencies in furthering this chapter to review noxious weed control efforts in this state.~~

NOTE: The proposed changes to this section remove unnecessary language, such as that directing the Agriculture Commissioner to "enforce" the chapter and to "encourage" the dissemination of information by the NDSU Extension Service. The changes also

remove directives for activities that are not presently done, such as the preparation of various posters and notices.

With respect to the directive that the Agriculture Commissioner compile and keep a list of noxious weeds, is there a particular procedure that should be followed other than the procedure under NDCC Chapter 28-32? The current list is contained in North Dakota Administrative Code Section 7-06-01-02. Should there be a procedure for reviewing the list from time to time to determine its relevancy? Should there be a procedure for removing a weed from the list?

SECTION 4. AMENDMENT. Section 63-01.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-03.1. County weed board - Jurisdiction. The jurisdiction of ~~each~~ a county weed board extends to all land within the county but does not include any land within the corporate limits of a city ~~if that city~~ has its own noxious weed control program under this chapter.

SECTION 5. AMENDMENT. Section 63-01.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-03.2. ~~State weed control authority~~ - Agriculture commissioner - Powers Request for reports. The commissioner may require operational reports and program reports regarding noxious weed control and pest control from county and city weed control authorities ~~regarding both noxious weed control and pest control officers.~~

NOTE: Because NDCC Section 63-01.1-05 directs county weed control officers to "prepare reports as requested by the commissioner and because Section 63-01.1-07.5 directs city weed control officers to "prepare reports as requested by the commissioner," it is suggested that this section is unnecessary and could be repealed.

SECTION 6. AMENDMENT. Section 63-01.1-04 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-04. County weed board - Members - Terms - Compensation.

1. Each board of county commissioners shall ~~establish~~:
 - a. Establish contiguous county weed board member areas. ~~Each county weed board member area must be contiguous; or~~
 - b. Determine that county weed board members must be appointed at large.
2. The board of county commissioners shall appoint a county weed board consisting of three, five, or seven members. Members shall serve for a term of four years or until their successors are appointed and qualified. The terms must be staggered so that no more than two expire each year. ~~Any~~

1 3. If the board of county commissioners has established county weed board member
2 areas, as provided for in subsection 1, any qualified elector residing in the county
3 weed board member area is eligible to represent that area on the board. If the
4 board of county commissioners has determined that county weed board members
5 must be appointed at large, as provided for in subsection 1, any qualified elector
6 residing in the county is eligible to serve on the county weed board. In each county
7 encompassing a city with a population of five thousand or more, one board
8 member must ~~be appointed from~~ reside within the corporate limits of that city
9 unless the city has established its own noxious weed control program under this
10 chapter.

11 ~~3.~~ 4. A board member shall assume office at the first regular meeting of the county weed
12 board following that member's appointment.

13 ~~4.~~ 5. The board of county commissioners shall remove a member of the county weed
14 board for repeated unexcused failures to attend meetings, for refusal to act as a
15 board member, or for incapacity. If a vacancy occurs on a county weed board, the
16 board of county commissioners, at its next regular meeting, shall appoint an
17 individual who possesses the necessary qualifications to fill the unexpired term.

18 ~~5.~~ 6. a. The county weed board shall elect ~~from its members~~ a chairman and a vice
19 chairman ~~and~~ from among its members.

20 b. The county weed board shall appoint a secretary and a treasurer. The
21 secretary and treasurer need not be members of the ~~county weed~~ board.

22 ~~6.~~ 7. The board of county commissioners may set rates of compensation for county
23 weed board members. Board members are entitled to reimbursement for actual
24 and necessary expenses and a mileage allowance at the rate established for state
25 employees.

NOTE: Under current law, county weed board members are elected from county weed board member areas established by the board of county commissioners. Because the declining population has made it difficult for some counties to find potential weed board members who reside in the member areas, the proposed change would allow those counties that desire to maintain weed board member areas to do so, while at the same time allowing other counties the option of having their weed board members appointed "at large."

Under current law, county weed boards are composed of five or seven members. Because the declining population has made it difficult for some counties to find potential

weed board members, the proposed change would allow county weed boards to consist of three, five, or seven members.

The final subsection states that the board of county commissioners may set rates of compensation for weed board members. It is not clear who is responsible for paying compensation to the secretary and the treasurer if they are not members of the weed board.

SECTION 7. AMENDMENT. Section 63-01.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-04.1. County weed board - Duties.

1. Each county weed board shall implement and pursue a program for the control of noxious weeds.
2. Each county weed board shall designate a county weed control officer who shall cooperate with the board and be responsible for the operation and enforcement of this chapter within the county. The county weed control officer may be a member of the county weed board. An individual may serve as a weed control officer for more than one weed board. Employment is for a tenure and at rates of compensation and reimbursement for travel expenses as the county weed board may prescribe and is without regard to any provisions of law relating to age or dual compensation. A county weed board shall certify the designation of a county weed control officer to the commissioner.
- ~~2. Each county weed board shall cooperate with all other control authorities.~~
- ~~3. Each county weed board shall implement and pursue a program for the control of noxious weeds.~~
3. Each county weed board shall fix the time and place of regular meetings. Each board shall meet at least once each year. All meetings are open to the public. Each board shall keep minutes of its meetings and a complete record of all official acts.
- ~~5. Each county weed board shall conduct at least one annual inspection to determine the progress of noxious weed control activities within the county.~~
4. Each county weed board shall control and disburse all moneys received by the county, for noxious weed control, from any source.

- 1 ~~7.~~ 5. Each county weed board shall provide technical assistance to any city ~~that in the~~
2 county which has a population of three thousand or more and which establishes its
3 own noxious weed control program under this chapter.

NOTE: Current law provides that each county weed board shall meet at least once each year. (See subsection 3.) Is this frequency appropriate to ensure that business is conducted in accordance with this chapter?

Current law provides that each county weed board shall provide technical assistance to any city that has a population of 3,000 or more and which establishes its own noxious weed control program under this chapter. (See subsection 7.) Under NDCC Section 63-01.1-07.1, it appears that a city of any size could establish a noxious weed control program, whereas Section 63-01.1-10.1 limits such a program to cities of 3,000 or more. This is in need of clarification.

Current law requires that each county weed board conduct at least one annual inspection to determine the progress of noxious weed control in the county. Because this is not done consistently, and there appear to be no ramifications for not conducting the inspection, the proposed change eliminates the requirement.

- 4 **SECTION 8. AMENDMENT.** Section 63-01.1-04.3 of the North Dakota Century Code
5 is amended and reenacted as follows:

6 **63-01.1-04.3. County weed board - Powers.** A county weed board may:

- 7 1. ~~Authorize the county weed control officer to cooperate with local law enforcement~~
8 ~~personnel in stopping and inspecting vehicles suspected of transporting noxious~~
9 ~~weed-infested materials.~~
10 2. ~~Expend funds from all available sources if a control authority the board determines~~
11 ~~that the extent of noxious weed infestation on certain land is so severe that~~
12 ~~eradication control efforts would place an extreme financial burden on the person~~
13 ~~otherwise liable for the expense landowner.~~
14 3. 2. Employ additional personnel to assist with noxious weed control and eradication
15 efforts.

NOTE: The language found in current subsection 1 is confusing from this standpoint: If a county weed board does not authorize the county weed control officer to cooperate with law enforcement personnel, may the county weed control officer engage in cooperation?

- 16 **SECTION 9. AMENDMENT.** Section 63-01.1-04.4 of the North Dakota Century Code
17 is amended and reenacted as follows:

18 **63-01.1-04.4. County weed board - Development of county weed list.** A county
19 weed board may ~~develop and compile its own list of~~ designate as noxious certain weeds that
20 are not on the state noxious weed list, provided the ~~list includes all weeds determined to be~~

- 1 ~~noxious by the commissioner. The commissioner, after consulting with the county weed board~~
2 ~~and consults with~~ the North Dakota state university extension service, ~~may require that a~~
3 ~~county weed board remove a noxious weed from its list and that the designation is approved by~~
4 ~~the commissioner.~~

NOTE: Under current law, a county weed board may designate a weed as being noxious. The board is not required to consult with the Extension Service, or for that matter, with any other entity. Even the Agriculture Commissioner is required to consult with the Extension Service under NDCC Section 63-01.1-03. Furthermore, there is no requirement that the Agriculture Commissioner be informed of this action. The onus is placed on the Agriculture Commissioner to find out whether county boards are adding weeds to their own lists and at that point, if the Agriculture Commissioner determines the addition to be inappropriate, the commissioner may require that it be removed. The proposed language allows county weed boards to declare as "noxious" certain weeds that are not on the state list. However, the board must first consult with the NDSU Extension Service and receive permission from the Agriculture Commissioner.

Perhaps consideration should be given to options for removing a weed from a county weed list. These options could include specific steps that should be taken by the county weed board or by the commissioner in order to remove a weed. If there is a concern that certain weeds were added to the list years ago and remain on the list, without a compelling reason for them being there, perhaps consideration could be given to sunseting all the lists as of a date certain and beginning anew or including a statutorily determined periodic sunset (e.g., every 5 or 10 years) for all the noxious weed lists.

- 5 **SECTION 10. AMENDMENT.** Section 63-01.1-05 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **63-01.1-05. County weed control officer - Duties of county weed control officer.**

8 The county weed control officer shall:

- 9 1. ~~Cooperate with all weed control authorities, county extension agents, land users,~~
10 ~~and others to further this chapter.~~
11 2. Become acquainted with the location of noxious weeds ~~on all land~~ within the
12 county.
13 ~~3. 2.~~ Encourage noxious weed control ~~or eradication~~ by all landowners and land
14 occupants within the county.
15 ~~4. 3.~~ Investigate all signed complaints received by the officer regarding noxious weeds
16 ~~received by any control authority.~~
17 ~~5. Take enforcement action when necessary~~ in the county.
18 ~~6. 4.~~ Post or publish in the official newspapers newspaper of the county any notices the
19 commissioner determines necessary to further noxious weed control ~~or eradication~~
20 under this chapter.

- 1 ~~7. 5.~~ Prepare reports as requested by the commissioner.
2 ~~8. 6.~~ Attend ~~area or statewide~~ meetings called by the commissioner to further noxious
3 weed control ~~or eradication~~ under this chapter.

NOTE: The language found in current subsection 1 was removed because it was determined to be unnecessary. The directives within the chapter cover the activities of county weed control officers.

The language found in current subsection 2 requires county weed control officers to "become acquainted with the location of noxious weeds on all land in the county." Because it is not understood what precisely is required in order to "become acquainted" with the location of the weeds, perhaps consideration should be given to requiring that there be an annual survey of noxious weeds in the county.

Current law requires a weed control officer to investigate all complaints regarding noxious weeds. Because this language leaves no discretion to the weed control officer, the proposed language directs that the weed control officer investigate all "signed" complaints. It does not preclude the weed officer from investigating anonymous complaints or those made telephonically, in person, etc.

- 4 **SECTION 11. AMENDMENT.** Section 63-01.1-05.1 of the North Dakota Century Code
5 is amended and reenacted as follows:

6 **63-01.1-05.1. Weed control officers - Certification of county and city weed control**
7 **officers—Extension service requirements.**

- 8 ~~1. The commissioner, after consultation with the director of the agricultural~~
9 ~~experiment station and the director of the North Dakota state university extension~~
10 ~~service, or their designees, shall adopt rules governing certification categories for~~
11 ~~county and city weed control officers. Before assuming any duties, each county~~
12 ~~and city weed control officer must be certified under rules adopted by the~~
13 ~~commissioner.~~
14 ~~2. The North Dakota state university extension service shall establish a program to~~
15 ~~provide educational instruction to county. County and city weed control officers as~~
16 well as other employees of weed boards are subject to the certification
17 requirements in chapter 4-35.

NOTE: Because it is not clear what was intended by the requirement that the commissioner adopt rules governing certification categories, and it was not clear what the NDSU Extension Service was to provide by way of educational instruction, the proposed language clarifies that weed control officers must meet all certification requirements governing the application of pesticides.

- 18 **SECTION 12. AMENDMENT.** Section 63-01.1-06 of the North Dakota Century Code is
19 amended and reenacted as follows:

63-01.1-06. Funding of county programs.

1. a. The board of county commissioners may pay the expenses of the county's noxious weed control program implemented under this chapter from the county general fund ~~to further the county noxious weed control program under this chapter, including to provide noxious weed control or eradication along public highways in the county.~~
 - b. ~~The county weed board may certify annually to the board of county commissioners a tax, not to exceed or, by majority vote, may levy any amount up to two mills per dollar on the taxable valuation of all taxable property in the county, to carry out this chapter.~~
 - e. ~~The board of county commissioners by majority vote may certify up to two additional mills on the taxable valuation of all taxable property in the county, except as certified by the county weed board, for the program. The levy may not be extended to property within the corporate limits of a city that establishes a that has implemented its own noxious weed control program under this chapter.~~
 - d. ~~The board of county commissioners shall levy the tax.~~
 - e. b. The county treasurer shall hold all taxes levied and collected in a separate fund known as the noxious weed control ~~or eradication~~ fund. Moneys in the fund must be used to pay the expenses of the county's noxious weed control program, including the salaries and expenses of the county weed board and the county weed control officer; and the expenses of noxious weed control or eradication along public highways in the county, and any other expenses incurred in the operation of a county noxious weed control or eradication program. The tax may be levied in excess of the mill levy limit prescribed by law for general purposes.
2. ~~The commissioner shall allocate the county share of any legislative appropriation for noxious weed control or eradication to the county weed boards pursuant to a formula adopted by the commissioner, after consultation with county weed boards. A county weed board may not receive more than one-half of the board's actual cost share expenditures for noxious weed control or eradication from any~~

- 1 ~~legislative appropriation, unless the commissioner in consultation with the county~~
2 ~~weed board determines a noxious weed is seriously endangering areas of a county~~
3 ~~or the state.~~
- 4 3. ~~To be eligible to receive landowner assistance cost share dollars a county must~~
5 ~~levy at least three mills for noxious weed control or eradication. The request for~~
6 ~~cost share dollars must be initiated by a county weed board by submitting a~~
7 ~~voucher and documentation. Upon approval of the voucher and documentation by~~
8 ~~the commissioner, the office of management and budget shall make the payment~~
9 ~~out of funds appropriated for the control or eradication of noxious weeds.~~
- 10 4. ~~If a program for the control or eradication of noxious weeds involves landowner~~
11 ~~participation, the landowner must contribute an amount equal to at least twenty~~
12 ~~percent of the total cost~~ consult with the county weed boards and develop a
13 formula for the distribution to county weed boards of all moneys appropriated by
14 the state for noxious weed control. The formula may include various criteria and
15 participation requirements such as cost-share, payment-in-kind, and minimum mill
16 levies.

NOTE: The proposed changes in subsection 1 clarify that a county weed control program may be paid for from the county general fund or by a levy of up to two mills per dollar on the taxable valuation of property in the county. The remainder of the section was a confusing description of county cost-share and landowner assistance programs. County weed boards currently are prohibited from receiving more than one-half of their actual costs, yet no provision is made for redistributing leftover dollars. Payments for landowner assistance programs are limited to those counties that levy at least three mills for noxious weed control, even though the counties are only authorized to levy two mills by this section.*

The proposed language maintains the authorization for a two-mill levy and directs the Agriculture Commissioner to consult with the county weed boards and develop a formula for the distribution of state dollars appropriated for noxious weed control. The formula may include various criteria, including cost-share requirements, payment-in-kind requirements, and minimum mill levy requirements.

*The two-mill requirement dates back to the initial legislation in 1971. The reference to three mills was added in 1985 S.L., ch. 684:

The commissioner shall allocate the funds of any legislative appropriation to the county weed board and cities which establish a program under section 63-01.1-10.1 pursuant to a formula adopted by the commissioner.

. . . No county weed board shall receive an amount under this subsection which, when added to the amount generated by a tax levy of three mills on the taxable valuation of all taxable property in the

county, would exceed eighty percent of the total cost of the actual expenditures for noxious weed control. . . .

SECTION 13. AMENDMENT. Section 63-01.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-07.1. City weed board members - Terms - Compensation.

1. If the governing body of a city elects to establish a noxious weed control program for the city, the governing body shall appoint a city weed board consisting of three, five, or seven members. Members shall serve for a term of four years or until their successors are appointed and qualified. The terms must be staggered so that no more than two expire each year. Any qualified elector residing within the city is eligible to serve on the board.
2. A board member shall assume office at the first regular meeting of the city weed board following that member's appointment.
3. The governing body of the city shall remove a member of the city weed board for repeated unexcused failures to attend meetings, for refusal to act as a board member, or for incapacity. If a vacancy occurs on a city weed board, the governing body of the city, at its next regular meeting, shall appoint an individual who possesses the necessary qualifications to fill the unexpired term.
4.
 - a. The city weed board shall elect ~~from its members~~ a chairman and a vice chairman and from among its members.
 - b. The city weed board shall appoint a secretary and a treasurer. The secretary and treasurer need not be members of the ~~city weed~~ board.
5. The governing body of the city may set rates of compensation for city weed board members. City weed board members are entitled to reimbursement for actual and necessary expenses and a mileage allowance at the rate established for city employees.

NOTE: Under current law, city weed boards are composed of five or seven members. Because proposed new language in NDCC section 63-01.1-07.1 allows county weed boards to consist of three, five, or seven members, that same option was provided here.

The final subsection states that the governing board of the city may set rates of compensation for weed board members. It is not clear who is responsible for paying compensation to the secretary and the treasurer, if they are not members of the board.

SECTION 14. AMENDMENT. Section 63-01.1-07.2 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-07.2. City weed board - Duties.

1. Each city weed board shall designate a city weed control officer who shall cooperate with the board and be responsible for the operation and enforcement of this chapter within the city. The city weed control officer may be a member of the city weed board. An individual may serve as a weed control officer for more than one weed board. Employment is for a tenure and at rates of compensation and reimbursement for travel expenses as the city weed board may prescribe and is without regard to any provision of law relating to dual compensation. A city weed board shall certify the designation of a city weed control officer to the commissioner.

~~2. Each city weed board shall cooperate with all other control authorities.~~

~~3.~~ Each city weed board shall implement and pursue an effective program for the control of noxious weeds.

~~4.~~ 3. Each city weed board shall fix the time and place of regular meetings. Each board shall meet at least once each year. All meetings are open to the public. Each board shall keep minutes of its meetings and a complete record of all official acts.

~~5. Each city weed board shall conduct at least one annual inspection to determine the progress of weed control activities within the city.~~

~~6.~~ 4. Each city weed board shall control and disburse all moneys received by the city from any source for noxious weed control.

NOTE: Current law requires that each city weed board conduct at least one annual inspection to determine the progress of noxious weed control in the city. Because this is not done consistently, and there appear to be no ramifications for not conducting the inspection, the proposed change eliminates the requirement.

SECTION 15. AMENDMENT. Section 63-01.1-07.3 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-07.3. City weed board - Powers. A city weed board may:

~~1. Authorize the city weed control officer to cooperate with local law enforcement personnel in stopping and inspecting vehicles suspected of transporting noxious weed infested materials.~~

2- Expend funds from all available sources if ~~a control authority~~ the board determines that the extent of noxious weed infestation on certain land is so severe that ~~eradication~~ undertaking control efforts would place an extreme financial burden on the ~~person otherwise liable for the expense~~ landowner.

3- 2. Employ additional personnel to assist with noxious weed control and eradication efforts.

NOTE: The language found in current subsection 1 is confusing from this standpoint: If a county weed board does not authorize the county weed control officer to cooperate with law enforcement personnel, may the county weed control officer engage in cooperation?

SECTION 16. AMENDMENT. Section 63-01.1-07.4 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-07.4. City weed board - Development of city weed list. A city weed board may ~~develop and compile its own list of~~ designate as noxious ~~certain weeds that are not on the state or county noxious weed list,~~ provided the ~~list includes all weeds determined to be noxious by the commissioner. The commissioner, after consulting with the city weed board and first consults with the North Dakota state university extension service, may require that a city weed board remove a noxious weed from its list and that the designation is approved by the commissioner.~~

NOTE: Under current law, a city weed board may designate a weed as being noxious. The board is not required to consult with the Extension Service, or for that matter, with any other entity. Even the Agriculture Commissioner is required to consult with the Extension Service under NDCC Section 63-01.1-03. Furthermore, there is no requirement that the Agriculture Commissioner be informed of this action. The onus is placed on the Agriculture Commissioner to find out whether or not city boards are adding weeds to their own lists and at that point, if the Agriculture Commissioner determines the addition to be inappropriate, the commissioner may require that it be removed. The proposed language allows city weed boards to declare as noxious certain weeds that are not on the state or county list. However, the board must first consult with the NDSU Extension Service and receive permission from the Agriculture Commissioner.

Perhaps consideration should be given to options for removing a weed from a city weed list. These options could include specific steps that should be taken by the city weed board or by the commissioner in order to remove a weed. If there is a concern that certain weeds were added to the list years ago and remain on the list, without a compelling reason for them being there, perhaps consideration could be given to sunseting all the lists as of a date certain and beginning anew or including a statutorily determined periodic sunset (e.g., every 5 or 10 years) for all the noxious weed lists.

SECTION 17. AMENDMENT. Section 63-01.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-07.5. Duties of city weed control officer. The city weed control officer shall:

- ~~1. Cooperate with all weed control authorities, county extension agents, land users, and others to further this chapter.~~
- ~~2. Become acquainted with the location of noxious weeds on all land within the city.~~
- ~~3. 2. Encourage noxious weed control or eradication by all landowners and land occupants within the city.~~
- ~~4. 3. Investigate all signed complaints received by any control authority the officer regarding noxious weeds within the city.~~
- ~~5. Take enforcement action when necessary.~~
- ~~6. 4. Post or publish in the official newspaper of the city any notices the commissioner deems determines necessary to further noxious weed control or eradication under this chapter.~~
- ~~7. 5. Prepare reports as requested by the commissioner.~~
- ~~8. 6. Attend area or statewide meetings called by the commissioner to further noxious weed control or eradication under this chapter.~~

NOTE: The language found in current subsection 1 was removed because it was determined to be unnecessary. The directives within the chapter cover the activities of city weed control officers.

Current law requires a weed control officer to investigate all complaints regarding noxious weeds. Because this language leaves no discretion to the weed control officer, the proposed language directs that the weed control officer investigate all "signed" complaints. It does not preclude the weed officer from investigating anonymous complaints or those made telephonically, in person, etc.

SECTION 18. AMENDMENT. Section 63-01.1-07.6 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-07.6. Funding of city programs.

- ~~1. a. The governing body of the city may pay the expenses of the city's noxious weed control program implemented under this chapter from the city general fund to further the city's noxious weed control program under this chapter, including to provide noxious weed control along public highways in the city.~~
- ~~b. The city weed board may certify annually to the governing body of the city a tax, not to exceed or, by majority vote, may levy any amount up to two mills per dollar on the taxable valuation of all taxable property in the city, to further its noxious weed control program under this chapter.~~

1 e. ~~The governing body of the city may by majority vote certify up to two~~
2 ~~additional mills on the taxable valuation of all taxable property in the city to~~
3 ~~further its noxious weed control program under this chapter.~~

4 d. ~~The governing body of the city shall levy the tax as certified by the city weed~~
5 ~~board, for the program.~~

6 e. ~~2.~~ The city treasurer shall hold all taxes levied and collected under this section in a
7 separate fund known as the noxious weed control ~~or eradication~~ fund. ~~Money~~
8 Moneys in the fund must be used to pay the expenses of the city's noxious weed
9 control program, including the salaries and expenses of the city weed board and
10 the city weed control officer; and the expenses of noxious weed control along
11 public highways in the city; ~~and any other expenses incurred in the operation of a~~
12 ~~city noxious weed control program.~~ The tax may be levied in excess of the mill
13 levy limit prescribed by law for general purposes.

14 ~~2.~~ ~~The commissioner shall allocate any legislative appropriation for noxious weed~~
15 ~~control or eradication to the city weed boards, pursuant to a formula adopted by the~~
16 ~~commissioner, after consultation with city weed boards. A city weed board may not~~
17 ~~receive more than one-half of the city's actual cost share expenditures for noxious~~
18 ~~weed control or eradication from any legislative appropriation, unless the~~
19 ~~commissioner in consultation with the city weed board determines a noxious weed~~
20 ~~is seriously endangering areas of a city.~~

21 ~~3.~~ ~~To be eligible to receive state cost share dollars, a city must levy at least three~~
22 ~~mills for noxious weed control or eradication. The request for cost share dollars~~
23 ~~must be initiated by a city weed board by submitting a voucher and documentation~~
24 ~~to the commissioner. Upon approval of the voucher and documentation by the~~
25 ~~commissioner, the office of management and budget shall make the payment out~~
26 ~~of funds appropriated for the control or eradication of noxious weeds.~~

27 ~~4.~~ ~~If a program for the control or eradication of noxious weeds involves landowner~~
28 ~~participation, the landowner must contribute an amount equal to at least twenty~~
29 ~~percent of the total cost.~~

NOTE: The proposed change in subsection 1 clarifies that a city weed control program may be paid for from the city general fund or by a levy of up to two mills per dollar on the taxable valuation of property in the city.

The remainder of the section under current law parallels the language that governs the distribution of state-appropriated dollars to county weed boards. Since cities do not receive direct appropriations in this manner, the language was deleted.

SECTION 19. AMENDMENT. Section 63-01.1-08 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-08. Entry upon land for noxious weed control ~~or eradication~~ purposes - Notices - Landowner rights - Remedial requirements - Liens - Penalty.

1. ~~Any control authority or its agent~~ A weed control officer may enter upon land within ~~its~~ the jurisdiction of the officer to perform duties and to exercise powers under this chapter, including ~~the taking of~~ specimens of weeds or other materials, without the consent of the landowner, ~~lessee, renter, tenant, or operator, or other person~~ responsible for the land and without being subject to any action for trespass or damages, ~~including damages for destruction of growing crops, if provided~~ reasonable care is exercised.
2.
 - a. ~~If any land within a city that has a noxious weed control or eradication program is found to be infested with noxious weeds by any control authority,~~ the a city weed control officer determines that land within the officer's jurisdiction contains noxious weeds, the officer may serve upon the landowner written notice either personally or by certified mail, requiring the landowner to control ~~or eradicate~~ the noxious weeds within the time period prescribed by the city weed control officer. ~~The landowner may request additional time from the city weed board. The notice must state that the landowner may be subject to the penalties provided in section 63-01.1-15 if the landowner fails to comply.~~
 - b. The notice must specify:
 - (1) Specify the minimal remedial requirements.~~A;~~
 - (2) Specify the time within which the landowner must meet the minimum remedial requirements;
 - (3) Specify that the landowner may be subject to penalties provided under this chapter if the landowner fails to comply with the remedial requirements;

- 1 (4) Include a statement of costs if the landowner fails to control the noxious
2 weeds and the city weed officer must provide for control of the weeds;
3 and
4 (5) Provide that the landowner may stay any efforts by the city weed officer
5 to control noxious weeds on the land, by requesting in writing that the
6 governing body of the city hold a hearing on the matter.
- 7 c. The city weed officer shall deliver a copy of the notice personally or forward a
8 copy of the notice ~~may be sent~~ by certified mail to any tenant, lessee, or
9 operator of the land. ~~If the city weed board will control or eradicate the~~
10 ~~noxious weeds upon failure of the landowner to do so, the notice must include~~
11 ~~a statement of costs on which the noxious weeds are located.~~
- 12 d. If the landowner does not ~~control or eradicate the noxious weeds~~ meet the
13 minimum remedial requirements within the time specified in the notice and
14 does not request a hearing on the matter by the governing body of the city,
15 the city weed control officer may cause the noxious weeds to be controlled ~~or~~
16 ~~eradicated~~ and the expenses charged against the land of the landowner.
- 17 e. If after holding a hearing on the matter the governing body of the city directs
18 that the noxious weeds be controlled by the city weed officer, any expenses
19 incurred by the city weed officer in controlling the weeds must be charged
20 against the land of the landowner. These expenses are part of the taxes to be
21 levied against the land for the ensuing year and must be collected in the same
22 manner as other real estate taxes. ~~If the city weed board intends to control or~~
23 ~~eradicate the noxious weeds, the notice must include a statement informing~~
24 ~~the landowner that the landowner may request that the city weed board not~~
25 ~~control or eradicate the noxious weeds. If the landowner requests that the city~~
26 ~~weed board not control or eradicate the noxious weeds, the board may not~~
27 ~~control or eradicate the noxious weeds until control or eradication is~~
28 ~~authorized by a majority vote of the city governing body.~~
- 29 3. a. If a county weed officer determines that any other land is found to be infested
30 with other than that referenced in subsection 2 contains noxious weeds by
31 ~~any control authority,~~ the county weed control officer may serve upon the

landowner written notice either personally or by certified mail, requiring the landowner to control ~~or eradicate~~ the noxious weeds within the time period prescribed by the county weed control officer. ~~The landowner may request additional time from the county weed board. The notice must state that the landowner may be subject to the penalties provided in section 63-01.1-15 if the landowner fails to comply.~~

b. The notice must ~~specify~~:

- (1) Specify the minimal remedial requirements.~~A;~~
- (2) Specify the time within which the landowner must meet the minimum remedial requirements;
- (3) Specify that the landowner may be subject to penalties provided under this chapter if the landowner fails to comply with the remedial requirements;
- (4) Include a statement of costs if the landowner fails to control the noxious weeds and the county weed officer must provide for control of the weeds; and
- (5) Provide that the landowner may stay any efforts by the county weed officer to control noxious weeds on the land, by requesting in writing that the board of county commissioners hold a hearing on the matter.

c. The county weed officer shall deliver a copy of the notice personally or forward a copy of the notice ~~may be sent by certified mail to any tenant, lessee, or operator of the land. If the county weed board will control or eradicate the noxious weeds upon failure of the landowner to control or eradicate the noxious weeds, the notice must include a statement of costs on~~ which the noxious weeds are located.

d. If the landowner does not ~~control or eradicate the noxious weeds~~ meet the minimum remedial requirement within the time specified in the notice and does not request a hearing on the matter by the board of county commissioners, the county weed control officer may cause the noxious weeds to be controlled ~~or eradicated~~ and the expenses charged against the land of the landowner.

1 e. If after holding a hearing on the matter the board of county commissioners
2 directs that the noxious weeds be controlled by the county weed officer, any
3 expenses incurred by the county weed officer in controlling the weeds must
4 be charged against the land of the landowner. These expenses are part of
5 the taxes to be levied against the land for the ensuing year and must be
6 collected in the same manner as other real estate taxes. ~~If the county weed~~
7 ~~board intends to control or eradicate the noxious weeds, the notice must~~
8 ~~include a statement informing the landowner that the landowner may request~~
9 ~~that the county weed board not control or eradicate the noxious weeds. If the~~
10 ~~landowner requests that the county weed board not control or eradicate the~~
11 ~~noxious weeds, the board may not control or eradicate the noxious weeds~~
12 ~~until control or eradication is authorized by a majority vote of the board.~~

NOTE: Like current law, the proposed changes in this section separate remediation with respect to land that is within the jurisdiction of a city weed control officer and that which is within the jurisdiction of a county weed control officer. The requirements are not changed, but they are presented in a fashion that allows for more clarity than the current law provides.

13 **SECTION 20. AMENDMENT.** Section 63-01.1-09 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **63-01.1-09. County weed board to control ~~or eradicate~~ noxious weeds along**
16 **county and township roads and highways.** The county weed board shall control ~~or~~
17 ~~eradicate~~ noxious weeds along county and township roads and highways and ~~the expense any~~
18 expenses incurred for ~~noxious weed the control or eradication~~ must be paid from funds as
19 provided in section 63-01.1-06.

20 **SECTION 21. AMENDMENT.** Section 63-01.1-10.1 of the North Dakota Century Code
21 is amended and reenacted as follows:

22 **63-01.1-10.1. Control of noxious weeds within cities.** The governing body of any
23 city having a population of three thousand or more may act as a control authority and may
24 establish and administer a program for the control ~~or eradication~~ of noxious weeds within the
25 jurisdictional limits of the city. If a program is not established, the county weed board shall
26 administer a program for the city.

NOTE: This section appears to be misplaced within the chapter. North Dakota Century Code Section 63-01.1-07.1 addresses the terms and compensation of city weed board members. Section 63-01.1-07.2 addresses their duties. Section 63-01.1-07.3

addresses their powers. Section 63-01.1-07.4 addresses the development of a city weed list. Section 63-01.1-07.5 addresses the duties of a city weed control officer. Section 63-01.1-07.6 addresses funding of city programs and after interspersal of a few additional sections, Section 63-01.1-10.1 finally authorizes the establishment of a city weed control program.

North Dakota Century Code Section 63-01.1-10.1 authorizes only cities with populations in excess of 3,000 to have their own weed control programs. Other sections in this chapter would appear not to impose the population criteria. It would be appropriate to confirm the criteria and ensure that the application is consistent throughout the chapter.

1 **SECTION 22. AMENDMENT.** Section 63-01.1-12 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **63-01.1-12. Preventing dissemination of noxious weeds.**

- 4 1. ~~To prevent the dissemination of noxious weeds by machinery, trucks, harvesting,~~
5 ~~or other farm equipment, and to prevent the dissemination of noxious weeds during~~
6 ~~transportation of plants, forage, screenings, dirt, and other articles, the~~
7 ~~commissioner shall publish a list of the possible methods by which noxious weeds~~
8 ~~or their propagating parts can be disseminated.~~
- 9 2. ~~All operators of tillage, seeding, and harvesting equipment shall clean their~~
10 ~~equipment to prevent the spread of noxious weeds by seed or other propagating~~
11 ~~parts prior to moving their equipment on public highways, airways, waterways, or~~
12 ~~by any other means of conveyance, public or otherwise. Trucks or trailers~~
13 ~~transporting~~ A person may not transport grain screenings must be unless the
14 vehicle used to transport the grain screenings is constructed and covered to
15 prevent noxious weed seed the dissemination. Scattering and dumping of noxious
16 weed seeds or the propagating parts of noxious weeds.
- 17 2. A person may not scatter or dump on land or in water any material containing
18 noxious weed seeds or propagating parts is prohibited unless the material has
19 been processed or treated, or unless it is buried deeply enough to destroy in a
20 manner that destroys the seeds and other propagating parts.

NOTE: Subsection 1, as it appears in current law, requires the Agriculture Commissioner to publish a list of the possible methods by which noxious weeds or their propagating parts can be disseminated. This provision is without direction as to when and where such a list must be published and more importantly, the completeness of the list is dependent on the imagination of the author or authors. For this reason, it is proposed that the requirement be deleted.

Subsection 2, as it appears in current law, requires all operators of tillage, seeding, and harvesting equipment to clean their equipment prior to moving it on public highways,

airways, waterways, etc. Because this provision is vague as to what constitutes the cleaning of equipment, and because verification is often not available, it is proposed that the requirement be deleted.

Current law provides that trucks or trailers transporting grain screenings must be constructed and covered to prevent the dissemination of noxious weed seeds. This provision has been reworded to make that the responsibility of a "person."

The provision, however, raises a second question: Is that activity (i.e., the dissemination of noxious weed seeds via their transportation in a truck or trailer) covered by the ensuing prohibition against "scattering" any material containing noxious weed seeds?

Another question with respect to this provision is whether it should be extended to other "products" in addition to grain screenings.

Current law prohibits the scattering and dumping of any material containing noxious weed seeds or propagating parts, unless the material has been processed or treated, or unless it is buried deeply enough to destroy the seeds and propagating parts. The phrase being "buried deeply enough" seems to be somewhat vague and probably requires unearthing the product in order to verify that the seeds and propagating parts have in fact been destroyed. It did not seem likely that, after burial at whatever depth, the product would be unearthed and then scattered or dumped on land or in water. Furthermore, in certain cases, burial could actually preserve the seeds and propagating parts. For these reasons, the reference to burial was deleted.

SECTION 23. AMENDMENT. Section 63-01.1-12.1 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-12.1. Quarantine period—~~Materials or farm products and area defined~~
- Declaration - Hearing.

- ~~1. If a control authority determines that an area is infested with noxious weeds and if materials or farm products from that area are liable to spread noxious weeds into other areas to the injury of others, the commissioner shall declare a quarantine against the area to prevent the transfer of materials or farm products from the quarantined area. If noxious weeds are likely to be introduced into this state by the importation of materials or farm products, the commissioner shall declare a quarantine against the importation of those materials or farm products.~~
- ~~2. The commissioner shall declare a quarantine when requested to do so through a resolution adopted by a two thirds majority of the weed board having jurisdiction over the area in which the quarantine is to be declared.~~
- ~~3. For the purposes of this section:~~
 - ~~a. "Area" means a geographical section of land identified by the commissioner and may include cities and counties or any portion of a city or county.~~

- 1 b. ~~"Farm products" means crops, crop products, and plants or portions of plants,~~
2 ~~but does not include livestock.~~
- 3 e. ~~"Materials" means gravel or other substances that can be transported over a~~
4 ~~highway, street, or road. If the commissioner determines that a quarantine of~~
5 ~~this state or any portion of this state may be necessary to prevent the spread~~
6 ~~of noxious weeds, the commissioner shall schedule a public hearing on the~~
7 ~~matter and provide notice of the hearing by publishing its time, place, and~~
8 ~~date in the official newspaper of each county having land within the area of~~
9 ~~the proposed quarantine. If after the hearing the commissioner orders the~~
10 ~~imposition of a quarantine, the order must include the date by which or the~~
11 ~~circumstances under which the commissioner shall lift the quarantine order.~~
- 12 2. If the commissioner determines that the imposition of an emergency quarantine is
13 necessary to prevent the spread of noxious weeds, the commissioner may impose
14 such an order for a period not to exceed fourteen days. Within the fourteen-day
15 period, the commissioner shall hold a public hearing as provided for in
16 subsection 1 and determine whether a quarantine order under subsection 1 should
17 be imposed.
- 18 3. Following the establishment of a quarantine, the movement of any product or
19 material described in the quarantine order is subject to the provisions and
20 restrictions of the order.

NOTE: The current quarantine law provides that if a county or city weed board or a county or city weed control officer determines that materials or farm products from an area are liable to spread noxious weeds into other areas, the Agriculture Commissioner shall declare a quarantine. It also provides that following a resolution by two-thirds of the members sitting on a weed board, the Agriculture Commissioner shall declare a quarantine. The two provisions appear to be independent of each other. Neither addresses the manner of communication that must take place between the local authority and the Agriculture Commissioner. Neither addresses enforcement of the quarantine, nor the length of the quarantine. Neither addresses the manner in which or the circumstances under which a quarantine once imposed may be lifted, and neither includes references to due process provisions such as hearings.

The proposed language provides that if the Agriculture Commissioner determines that a quarantine may be necessary, there must be notice and a public hearing. If the commissioner imposes a quarantine, the order must include the date by which or the circumstances under which the quarantine is to be lifted. If an emergency exists, the proposed new language gives the commissioner the authority to impose a quarantine for a period of up to 14 days. Within that time period, the commissioner must hold a public hearing.

1 **SECTION 24. AMENDMENT.** Section 63-01.1-12.2 of the North Dakota Century Code
2 is amended and reenacted as follows:

3 **63-01.1-12.2. Weed-free certification - Gravel and sand pits and hay land.**

- 4 1. ~~The commissioner, after consulting with the North Dakota state university~~
5 ~~extension service, may adopt rules for certifying that gravel, scoria, or sand surface~~
6 ~~mining operations and land producing hay for sale or for resale are not~~
7 ~~contaminated with weeds. The rules must identify the extent to which weeds are~~
8 ~~allowed with certification.~~
- 9 2. ~~The weed board, after consulting with the North Dakota state university extension~~
10 ~~service, may certify gravel, scoria, or sand surface mining operations and land~~
11 ~~producing hay for sale or for resale as not contaminated with weeds shall develop~~
12 ~~a program of training for county and city weed officers so that they may be~~
13 ~~credentialed to certify that certain land, forage, and products, including sand,~~
14 ~~gravel, and scoria, are within the tolerances for noxious weeds established by the~~
15 ~~north American weed management association or within the tolerances for noxious~~
16 ~~weeds established by the commissioner.~~
- 17 3. 2. The commissioner shall adopt a schedule of fees that county and city weed boards
18 ~~and the North Dakota state university extension service may charge for inspecting,~~
19 ~~testing, analyzing, and certifying gravel, scoria, or sand surface mining operations~~
20 ~~and hay land.~~
- 21 4. ~~Certification of gravel, scoria, sand surface mining operations, or hay land is not a~~
22 ~~warranty of any kind as to the quality of the gravel, sand, or hay produced from an~~
23 ~~inspected and certified location. The only representation made is that land from~~
24 ~~which sand and gravel is surface mined or land producing hay for sale or resale~~
25 ~~has been inspected for weed contamination under rules adopted by the~~
26 ~~commissioner~~ officers may charge for providing the certification under
27 subsection 1.

NOTE: Current law directs the Agriculture Commissioner to adopt rules for certifying that certain land and products are not contaminated with weeds and then directs that the rules must identify the extent to which weeds are allowed under the certification.

Current law also authorizes weed boards to certify that certain land and products are not contaminated with weeds, provided that the board first consults with the NDSU Extension Service. The purpose for the consultation is not noted in current law.

The proposed language directs the NDSU Extension Service to develop a training program so that county and city weed officers might be credentialed to certify that certain land and products are within the tolerances for noxious weeds established by the North American Weed Management Association or within the tolerances for noxious weeds established by the Agriculture Commissioner.

SECTION 25. AMENDMENT. Section 63-01.1-13 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-13. Publicly owned land - Noxious weed control ~~or eradication~~.

~~1. The commissioner shall attempt to arrange a noxious weed control or eradication program with all state and federal agencies owning, controlling, or having jurisdiction over land within the state.~~

~~2. Weed control officers shall attempt to arrange a noxious weed control or eradication program with political subdivisions owning or controlling public land within each weed control officer's jurisdiction.~~

~~3. Each state agency shall provide for the control or eradication of noxious weeds on any land within its jurisdiction. If a state agency fails to control or eradicate noxious weeds on land under its jurisdiction, the county weed board for the county in which all or a portion of the land is located, upon approval of the commissioner, may enter upon the land to control or eradicate the noxious weeds. The state agency shall reimburse the county weed board for expenses incurred in the control or eradication of controlling the noxious weeds within thirty days after the agency receives the bill.~~

~~4. Each federal agency shall develop a management plan for controlling or eradicating noxious weeds on land under the agency's jurisdiction. If a federal agency does not control or eradicate the noxious weeds and does not develop a management plan for controlling or eradicating the noxious weeds, the weed control office shall notify the agency as provided in section 63-01.1-08. The federal agency shall provide a report to the control authorities detailing the methods used by the federal agency and showing cause why the federal agency is not controlling or eradicating the noxious weeds. The commissioner may specify the forms on which the federal agency report must be submitted.~~

- 1 5- ~~Upon being notified by a weed board of the federal agency's failure to control or~~
2 ~~eradicate noxious weeds, the commissioner may hold a public hearing to~~
3 ~~determine the reason for the failure.~~

NOTE: Current law requires the Agriculture Commissioner to attempt to arrange a noxious weed control or eradication program with all state and federal agencies and similarly, it requires weed control officers to attempt to arrange a noxious weed control or eradication program with those political subdivisions owning or controlling public land within their jurisdiction. It is proposed that such "attempt" language be deleted. Nothing would preclude either the Agriculture Commissioner or the local weed boards and weed officers from attempting to arrange such programs. The deletion merely recognizes that a statutory directive calling for an "attempt" is a nebulous standard.

Current law likewise requires each federal agency to develop a management plan for controlling or eradicating noxious weeds on land under the agency's jurisdiction and if it fails to do so, the Agriculture Commissioner may hold a public hearing. This language is deleted because the state is without authority to direct such action on the part of the federal government. If the Agriculture Commissioner elects to hold a public hearing on this or any other matter, it is within the commissioner's purview to do so. Statutory authority is not required.

- 4 **SECTION 26. AMENDMENT.** Section 63-01.1-14 of the North Dakota Century Code is
5 amended and reenacted as follows:

- 6 **63-01.1-14. Noxious weed control enforcement responsibilities of other agencies.**

- 7 The state highway patrol; and county sheriffs, ~~and the truck regulatory division,~~ when requested
8 to do so by a weed control authority, shall cooperate with a weed control authority and may
9 enforce subsection ~~2~~ 1 of section 63-01.1-12 if machinery, commodities, or articles being
10 moved on state and federal highways or on county or township roads are contributing to the
11 dissemination of noxious weeds.

NOTE: This section directs that only certain elements of law enforcement cooperate with weed control authorities. Are city law enforcement officers thereby precluded from cooperating with weed control authorities? Would it be more appropriate to reference "all law enforcement personnel"?

The section goes on to provide that those certain elements of law enforcement "may" enforce NDCC Section 63-01.1-12(2), if in fact the prohibited actions are occurring. Should the enforcement be discretionary?

North Dakota Century Code Section 39-03-03 provides that the "highway patrol shall enforce the . . . laws of this state relating to the protection and use of highways and shall patrol the highways and cooperate with sheriffs and police in enforcing the laws regulating the operation of vehicles and the use of highways." Does what appears to be mandatory enforcement in Section 39-03-03 conflict with discretionary enforcement in Section 63-01.1-12?

North Dakota Century Code Section 11-15-03 provides that the county "sheriff shall . . . [p]reserve the peace." Is this sufficient authority to preclude the need for Section 63-01.1-14?

By including this reference to the enforcement of a specific statute, is it being suggested that law enforcement personnel do not have the authority to enforce statutes unless appropriate language accompanies each prohibited or required act?

The reference to the Truck Regulatory Division was removed because that division's duties were assigned to the state Highway Patrol in 1983.

SECTION 27. AMENDMENT. Section 63-01.1-15 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-15. Penalties.

1. ~~A custom or commercial operator of tillage, seeding, and harvesting equipment who violates subsection 2 of section 63-01.1-12 is guilty of a class B misdemeanor. A control authority may institute necessary criminal actions under this subsection.~~
2. ~~Persons failing~~ Any person who fails to comply with ~~the rules and notice provisions of this chapter are~~ or rules adopted to implement this chapter is subject to a civil penalty in an amount not to exceed eighty dollars per day for each day of violation, subject to a maximum penalty of four thousand dollars per year. The accumulated penalties under this section are a lien against the property ~~of the landowner on which the noxious weeds were found~~ from the day the notice is delivered to the landowner under section 63-01.1-08.
3. ~~2.~~ a. All penalties collected ~~pursuant to~~ under this section must be deposited with the treasurer of ~~the political subdivision~~ and credited to the weed control and eradication fund ~~in the political subdivision in which the penalty originated of:~~
 - (1) The county in which the noxious weed infested land is situated or in which the actionable offense occurred if the action was instituted by or on behalf of a county weed board; or
 - (2) The city in which the noxious weed infested land is situated or in which the actionable offense occurred if the action was instituted by or on behalf of a city weed board.
- b. If the land is situated in more than one county or city, or if the actionable offense occurred in more than one county or city, any penalty collected under this section must be prorated among the respective political subdivision and credited to their respective weed control funds.

1 4. ~~3.~~ ~~The penalty~~ Any penalties provided for under this section may be adjudicated by a
2 court or by either a county weed board or a city weed board after a hearing.

3 ~~5.~~ 4. An aggrieved landowner may appeal the imposition of a penalty by a county weed
4 board to the board of county commissioners and may appeal the imposition of a
5 penalty by a city weed board to the governing body of the city.

NOTE: North Dakota Century Code Section 63-01.1-12(2) provides that:

2. All operators of tillage, seeding, and harvesting equipment shall clean their equipment to prevent the spread of noxious weeds by seed or other propagating parts prior to moving their equipment on public highways, airways, waterways, or by any other means of conveyance, public or otherwise. Trucks or trailers transporting grain screenings must be constructed and covered to prevent noxious weed seed dissemination. Scattering and dumping on land or in water, any material containing noxious weed seeds or propagating parts is prohibited unless the material has been processed or treated, or unless it is buried deeply enough to destroy the seeds and other propagating parts.

Under current law, therefore, only custom or commercial operators are subject to a Class B misdemeanor for violating this subsection.

The proposed changes to NDCC Section 63-01.1-12 would delete the language regarding equipment cleaning because of enforcement issues. Based on that deletion, the language is reconciled in this section by deletion of subsection 1.

6 **SECTION 28. AMENDMENT.** Section 63-01.1-18 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **63-01.1-18. Investigation by ~~agriculture~~ commissioner - Conflict of interest.**

9 1. If an individual who provided written notice of an alleged failure to eradicate or
10 control noxious weeds believes that the matter has not been addressed
11 satisfactorily by the weed board within twenty-one days from the date of the
12 complaint, the individual may provide written notification to the local governing
13 authority.

14 2. If the individual who provided notice of an alleged failure to eradicate or control
15 noxious weeds believes that the matter has not been addressed satisfactorily by
16 the local governing authority within twenty-one days from the date of the notice to
17 the local governing authority, the individual may provide written notification to the
18 ~~agriculture~~ commissioner.

19 3. Upon receiving such notification, the ~~agriculture~~ commissioner shall investigate the
20 matter.

4. If the commissioner determines that a weed board has not addressed the matter satisfactorily within the twenty-one-day period, the commissioner may act to enforce this chapter.

5. A weed board may request that the agriculture commissioner investigate any complaint received by the board if the board determines that its ability to enforce this chapter is compromised because of a conflict of interest.

NOTE: In the 2005 legislative session, this section was added to provide a state-level oversight, in the event a person believed that a local weed board was not adequately addressing a complaint regarding the control of noxious weeds. The current law authorizes the Agriculture Commissioner to investigate the matter and, if appropriate, to enforce the chapter.

The provision carries with it several practical concerns regarding enforcement. Does the Agriculture Commissioner function in place of the weed officer or the weed board? May the Agriculture Commissioner expend local funds in that capacity? Must the Agriculture Commissioner provide this service at state expense? If a local governmental entity fails to perform its statutorily mandated duties, are there other responses that could be used, i.e., recall petitions, writs of mandamus, the electoral process, etc.

SECTION 29. AMENDMENT. Section 63-01.1-19 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-19. County weed board - Pest control - Authorization.

1. The board of county commissioners, in consultation with the county weed board, may authorize the county weed board to control ~~or eradicate~~ pests on public lands within the county and to cooperate with landowners for the purpose of controlling ~~or eradicating~~ pests on private land within the county.

2. A county weed board that has been authorized to control ~~or eradicate~~ pests under this section may:

a. Expend funds ~~made available from state or federal~~ from all available sources for pest control ~~or eradication~~ purposes; and

b. ~~Direct the county weed control officer to encourage landowners and occupants in the county to control or eradicate pests; and~~

e. Employ additional personnel to assist with pest control ~~and eradication~~ efforts under this section.

NOTE: The proposed language eliminates the statutory language that authorizes a county weed board to direct that its county weed control officers encourage landowners and occupants to control or eradicate pests. This language appears to be better suited to a job description. It is not an activity that is in need of statutory authorization.

SECTION 30. AMENDMENT. Section 63-01.1-20 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-20. County weed control officer - Pest control ~~or eradication~~. If a county weed board is authorized to control ~~or eradicate~~ pests under section 63-01.1-19, the county weed control officer shall:

- ~~1. Cooperate with all control authorities, county extension agents, landowners, and others to further pest control or eradication under this chapter.~~
- ~~2.~~ Become acquainted with the location of pests ~~on all land~~ within the county.
- ~~3.~~ 2. Encourage pest control ~~or eradication~~ by all landowners and land occupants within the county.
- ~~4.~~ 3. Investigate all signed complaints received by the officer regarding pests ~~received~~ by ~~any control authority~~ in the county.
- ~~5.~~ 4. Post or publish in the official newspapers newspaper of the county any notices the commissioner determines necessary to further pest control ~~or eradication~~ under this chapter.
- ~~6.~~ 5. Prepare reports as requested by the commissioner.
- ~~7.~~ 6. Attend ~~area or statewide~~ meetings called by the commissioner to further pest control ~~or eradication~~ under this chapter.

NOTE: The language found in current subsection 1 was removed because it was deemed to be unnecessary. The directives within the chapter cover the activities of individuals and entities involved in the control or eradication of pests.

Current law requires a county weed control officer to investigate all complaints received regarding pests. Because this language leaves no discretion to the officer, the proposed language directs that the officer investigate all "signed" complaints. It does not preclude the officer from investigating anonymous complaints, or those made telephonically, in person, etc.

SECTION 31. AMENDMENT. Section 63-01.1-21 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-21. County weed board - Pest control ~~or eradication~~ - Roads and highways. The county weed board shall control ~~or eradicate~~ pests along county and township roads and highways within the county and any expenses incurred in the control ~~or eradication~~ must be paid from funds as provided in section 63-01.1-06.

NOTE: This section requires that dollars raised for the control of noxious weeds be redirected for the control of pests. North Dakota Century Code Section 63-01.1-06, on the other hand, requires that the money be used to "pay the salaries and expenses of

the county weed board and the county weed control officer, the expenses of noxious weed control or eradication along public highways in the county, and any other expenses incurred in the operation of a county noxious weed control or eradication program."

SECTION 32. AMENDMENT. Section 63-01.1-22 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-22. City weed board - Pest control - Authorization.

1. The governing body of a city, in consultation with the city weed board, may authorize the city weed board to control ~~or eradicate~~ pests on land within the corporate boundaries of the city and to cooperate with landowners for the purpose of controlling ~~or eradicating~~ pests on private land within the city.
2. A city weed board that has been authorized to control ~~or eradicate~~ pests under this section may:
 - a. Expend funds ~~made available from state or federal~~ from all available sources for pest control ~~or eradication~~ purposes; and
 - b. ~~Direct the city weed control officer to encourage landowners and occupants in the city to control or eradicate pests; and~~
 - c. Employ additional personnel to assist with pest control ~~and eradication~~ efforts under this section.

NOTE: The proposed language eliminates the statutory language that authorizes a city weed board to direct that its city weed control officers encourage landowners and occupants to control or eradicate pests. This language appears to be better suited to a job description. It is not an activity that is in need of statutory authorization.

SECTION 33. AMENDMENT. Section 63-01.1-23 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-23. City weed control officer - Pest control ~~or eradication~~. If a city weed board is authorized to control ~~or eradicate~~ pests under section 63-01.1-22, the city weed control officer shall:

1. ~~Cooperate with all control authorities, county extension agents, landowners, and others to further pest control or eradication under this chapter.~~
2. Become acquainted with the location of pests ~~on all land~~ within the city.
3. ~~2.~~ Encourage pest control ~~or eradication~~ by all landowners and land occupants within the city.

- 1 4- 3. Investigate all signed complaints received by the officer regarding pests ~~received~~
2 ~~by any control authority~~ within the city.
- 3 5- 4. Post or publish in the official newspaper of the city any notices the commissioner
4 determines necessary to further pest control ~~or eradication~~ under this chapter.
- 5 6- 5. Prepare reports as requested by the commissioner.
- 6 7- 6. Attend ~~area or statewide~~ meetings called by the commissioner to further pest
7 control ~~or eradication~~ under this chapter.

NOTE: The language found in current subsection 1 was removed because it was determined to be unnecessary. The directives within the chapter cover the activities of city weed control officers.

Current law requires a city weed control officer to investigate all complaints received regarding pests. Because this language leaves no discretion to the officer, the proposed language directs that the officer investigate all "signed" complaints. It does not preclude the officer from investigating anonymous complaints, or those made telephonically, in person, etc.

8 **SECTION 34. AMENDMENT.** Section 63-01.1-24 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **63-01.1-24. City weed board - Pest control ~~or eradication~~ - Roads and highways.**

11 The city weed board shall control ~~or eradicate~~ pests along streets, roads, and highways within
12 the city and any expenses incurred in the control ~~or eradication~~ must be paid from funds as
13 provided in section 63-01.1-07.6.

NOTE: This section requires that dollars raised for the control of noxious weeds by a city be redirected for the control of pests. North Dakota Century Code Section 63-01.1-07.6, on the other hand, requires that the money be used to "pay the salaries and expenses of the city weed board and the city weed control officer, the expenses of noxious weed control along public highways in the city, and any other expenses incurred in the operation of a city noxious weed control program."

14 **SECTION 35. AMENDMENT.** Section 63-01.1-25 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **63-01.1-25. Publicly owned land - Pest control ~~or eradication~~.**

- 17 1- ~~The commissioner shall attempt to arrange a pest control or eradication program~~
18 ~~with all state and federal agencies owning, controlling, or having jurisdiction over~~
19 ~~land within the state.~~
- 20 2- ~~Except as provided in subsection 3, a county weed control officer shall attempt to~~
21 ~~arrange a pest control or eradication program with all political subdivisions owning~~
22 ~~or controlling public land within the county weed control officer's jurisdiction.~~

- 1 ~~3. If a city has a pest control or eradication program, the city weed control officer shall~~
2 ~~attempt to arrange a pest control or eradication program with all political~~
3 ~~subdivisions owning or controlling public land within the corporate limits of the city.~~
- 4 4. Each state agency shall provide for the control ~~or eradication~~ of pests on any land
5 within the agency's jurisdiction. If a state agency fails to control ~~or eradicate~~ pests
6 on land under its jurisdiction, the county weed board ~~having jurisdiction over the~~
7 ~~area in which all or a portion of the land is located~~, upon approval of the
8 commissioner, may enter upon the land to control ~~or eradicate~~ the pests. The
9 state agency shall reimburse the weed board for expenses incurred in controlling
10 the ~~control or eradication~~ of pests within thirty days after the agency receives the
11 bill.
- 12 ~~5. Each federal agency shall develop a management plan for controlling or~~
13 ~~eradicating pests on land within the agency's jurisdiction. If a federal agency does~~
14 ~~not control or eradicate pests and does not develop a management plan for~~
15 ~~controlling or eradicating pests, the weed control officer shall notify the agency as~~
16 ~~provided in section 63-01.1-08. The federal agency shall provide a report to the~~
17 ~~control authority detailing the methods used by the federal agency and showing~~
18 ~~cause why the federal agency is not controlling or eradicating the pests. The~~
19 ~~commissioner may specify the forms on which the federal agency report must be~~
20 ~~submitted.~~
- 21 ~~6. Upon being notified by a weed board of a federal agency's failure to control or~~
22 ~~eradicate pests, the commissioner may hold a public hearing to determine the~~
23 ~~reason for the agency's failure.~~

NOTE: Current law requires the Agriculture Commissioner to attempt to arrange a pest control or eradication program with all state and federal agencies and similarly, it requires weed control officers to attempt to arrange a pest control or eradication program with those political subdivisions owning or controlling public land within their jurisdiction. It is proposed that such "attempt" language be deleted. Nothing would preclude either the Agriculture Commissioner or the local weed boards and weed officers from attempting to arrange such programs. The deletion merely recognizes that a statutory directive calling for an "attempt" is a nebulous standard.

Current law likewise requires each federal agency to develop a management plan for controlling or eradicating pests on land under the agency's jurisdiction and if it fails to do so, the Agriculture Commissioner may hold a public hearing. This language is deleted because the state is without authority to direct such action on the part of the federal government. If the Agriculture Commissioner elects to hold a public hearing on this or

any other matter, it is within the commissioner's purview to do so. Statutory authority is not required.