

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1473

By: Adair

COMMITTEE SUBSTITUTE

An Act relating to agriculture; creating the Noxious Weed Eradication Act; stating purpose; defining terms; requiring certain boards of county commissioners to implement certain sections of the Noxious Weed Eradication Act; authorizing cooperation and written agreements between certain entities for eradication purposes; specifying certain conditions; providing for certain elections; specifying procedures; providing for payment of certain expenses; providing for content of certain procedures; providing for voting; specifying powers and duties; providing for liability; requiring certain information; providing for assessment; providing for procedures; providing for collection; requiring audits and inspections; providing for content; providing for payment of costs; creating the Noxious Weed Eradication Fund; providing for deposits and creation; providing for uses; providing for use of certain funds; authorizing additional assessments; making certain monies not county monies; making certain obligations non-county; providing for assessment of certain penalties; providing for remittance and reimbursement; authorizing procedures for completion of eradication program; providing conditions; authorizing revocation methods and procedures; authorizing entry to certain premises for eradication activities; providing for rules; providing for public hearings; making certain actions unlawful; authorizing rules; providing for notice of certain prohibitions and requirements; authorizing destruction or treatment of thistles in certain circumstances; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-51.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

Sections 2 through 16 of this act shall be known and may be cited as the "Noxious Weed Eradication Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-51.2 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Noxious weeds are declared to be a public nuisance.

B. Eradication districts may be organized pursuant to the Noxious Weed Eradication Act for the purpose of developing and providing an adequate means for the eradication of or controlling noxious weeds.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-51.3 of Title 2, unless there is created a duplication in numbering, reads as follows:

As used in the Noxious Weeds Eradication Act:

1. "Noxious weeds" are plants determined to be noxious weeds by the Oklahoma State Department of Agriculture and include the plants musk thistle (*Carduus nutans* L.), Scotch thistle (*Onoprodum acanthium* L.) and Canada thistle (*Cirsium arvense*);

2. "Eradication district" means an eradication district created pursuant to the Noxious Weed Eradication Act which has as its boundary the established boundary of a conservation district organized pursuant to the Conservation District Act;

3. "Directors" means the board of directors of a conservation district organized pursuant to the Conservation District Act;

4. "Board of county commissioners" means the board of county commissioners of the county in which the greatest portion of the territory of any proposed eradication district is located;

5. "County clerk" means the county clerk of the county in which the greatest portion of the territory of any proposed eradication district is located;

6. "Assessments" means any annual or special fee imposed by an eradication district for the payment of organization, maintenance, operating and current expenses, noxious weed eradication and any other lawful expenditure authorized by the directors or the electors pursuant to the Noxious Weed Eradication Act;

7. "Elector" means any person who is of legal voting age and is the owner in fee or the owner of a life estate in land within an eradication district or proposed eradication district, or any trustee for a beneficiary or guardian of any ward who owns either in fee or a life estate in land; or an executor, administrator or

trustee of any estate owning land in said eradication district or proposed eradication district. The owner of any remainder of any land subject to a life estate shall not be an elector; and

8. "Person" means any individual, corporation, company, society, association or other business entity.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-51.4 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any twenty-five or more owners of lands in an established conservation district organized pursuant to the Conservation District Act may file with the county clerk a petition addressed to the board of county commissioners praying for the incorporation of an eradication district pursuant to the provisions of the Noxious Weed Eradication Act. The petition shall:

1. State that the petitioners are owners of land within the proposed eradication district;

2. Allege that a noxious weed problem exists in the proposed eradication district; and

3. Pray that an election be held for the creation of an eradication district and assessment levied for the eradication district.

B. If the proposed eradication district is situated in more than one (1) county, the petition shall be filed with the county clerk of the county in which the greatest portion of the territory of the proposed eradication district is located and that board of county commissioners shall have jurisdiction to hear and determine the petition.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-51.5 of Title 2, unless there is created a duplication in numbering, reads as follows:

Whenever a petition as provided in Section 4 of this act is filed with the county clerk, such county clerk shall thereupon give notice to the county commissioners of the filing and pendency of said petition, whereupon the county commissioners shall forthwith enter their order setting a public hearing upon said petition for a day certain and directing the county clerk to give

notice of said hearing by legal publication for two (2) consecutive weeks in a newspaper published in each county containing lands embraced within the boundaries of the proposed eradication district. Said newspapers must have a general circulation in the county of publication. Provided, however, if there is a county in which there is no newspaper of general circulation published, notice of such hearing shall be given by posting in five public places within said county, one of which shall be the county courthouse. Such notice shall contain:

1. A brief and concise statement describing the purpose of such hearing;
2. A description of the territory to be embraced within said eradication district; and
3. A notice to all persons owning land within the proposed eradication district that they may appear upon the date and at the time and place of said hearing to show cause, if any there be, why said petition should not be granted.

In addition, the county clerk shall, at least ten (10) days before the date fixed for said hearing, give or send by registered or certified mail notice thereof to each of the petitioners.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-51.6 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. At the time and place set for the hearing and consideration of the petition, it shall be the duty of the board of county commissioners to determine whether:

1. Proper notice of the hearing has been given as required by Section 5 of this act;
2. A noxious weed problem exists in the proposed eradication district; and
3. An election should be held for the creation of an eradication district and levy of an assessment for the eradication district.

B. If, upon such consideration after public hearing, it is found that:

1. Such petition is in conformity with the requirements of the Thistle Eradication Act;

2. A noxious weed problem exists in the proposed eradication district; and

3. An election should be held to create an eradication district and levy an assessment, the board of county commissioners shall thereupon immediately provide for an election pursuant to the Noxious Weed Eradication Act. The board of county commissioners shall enter upon its records full minutes of such hearing, together with its order providing for an election creating the eradication district.

C. If the proposed eradication district is situated in more than one (1) county, the board of county commissioners having jurisdiction to hear the petition shall notify the county commissioners of any other county within the proposed eradication district of the pendency of the petition.

D. The board of county commissioners shall notify the board of directors of the conservation district within which the proposed eradication district lies of the order providing for an election. The board of directors of the conservation district shall be responsible for conducting the election. The board of directors of the conservation district shall designate the polling places in the district. Ballots in an election may be mailed to a central location or delivered in person to the designated polling places. All landowners in the conservation district shall be eligible to vote in such election.

E. The election must be preceded by at least forty-five (45) days' noticed published in one or more newspapers published and distributed in the proposed eradication district. The notice shall be published not less than once a week for three (3) consecutive weeks. The conservation district shall bear all reasonable expenses incurred in conducting the election. All expenses shall be approved by the board of directors of the conservation district prior to being incurred.

F. The notice shall specify the dates, times and places for holding the election and shall include a sample ballot with substantially the following wording:

"DO YOU FAVOR THE CREATION OF A NOXIOUS WEED ERADICATION DISTRICT AND ASSESSMENTS OF \_\_\_\_\_ FOR NOXIOUS WEED ERADICATION?"

G. The board of directors shall also propose in the election the:

1. Maximum assessment to be paid by landowners in the eradication district;
2. Time for which the assessment will be levied; and
3. Method and manner of assessment.

H. An elector may vote only once in the referendum.

I. The eradication district is created and assessment approved if at least sixty percent (60%) those voting vote in favor of the creation of the eradication district and the assessment.

J. If a noxious weed eradication district and assessment is approved, the board of directors shall collect the annual assessment from the landowners in the district in the year such assessment is approved.

K. If the creation of the eradication district and the assessment under this section is not approved, the board of directors may conduct one other election.

L. Certified results of the election in the proposed district shall be transmitted within twenty-four (24) hours after the voting ends to the board of county commissioners and to the county commissioners of any other county in the eradication district. The results of the election shall be determined by the board of county commissioners who shall certify the results and issue a proclamation declaring the results.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-51.7 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The board of directors of the conservation district in which the eradication district lies shall be the governing body of the eradication district.

B. Within sixty (60) days after the election creating the eradication district, at the time and place established by the board of directors for the first meeting of the electors of the district, the electors shall adopt bylaws. In addition to any other provisions normally and properly included in bylaws, the bylaws shall, at a minimum, include provisions regarding the following:

1. Establishing the eradication district's name;

2. Requiring an annual meeting of electors and providing that a notice of such annual meeting be given, by mail, to each elector not less than fifteen (15) days prior to the annual meeting;

3. Requiring special meetings of electors and providing that a notice of such special meeting be given, by mail, to each elector not less than fifteen (15) days prior to the special meeting;

4. Requiring that each elector be entitled to one vote on any election, motion, resolution or proposal properly brought for vote before the electors;

5. Providing that each elector may vote in person, by proxy or by absentee ballot by procedures established and supervised by the directors; and

6. Providing for setting and modification of assessments.

B. Following the adoption of bylaws, the electors shall conduct such other business as may be necessary for the proper organization of the district.

C. Additional assessment referenda may be conducted as necessary by the board of directors from any other funds available to the board of directors. Such other referenda shall not be held before the one hundred twenty-first day after the date on which the last referendum on the same issue was held.

D. After the passage of any referendum, the electors shall be allowed, by subsequent referenda periodically to vote on whether

to continue the assessments. All of the requirements for an initial referendum must be met in subsequent referenda.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-51.8 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The board of directors shall have the power and duty to:

1. Conduct additional assessment referenda pursuant to Section 7 of this act;
2. Conduct programs consistent with the Noxious Weed Eradication Act;
3. Develop bylaws for the due and orderly administration of the affairs of the board of directors and for its responsibilities specified pursuant to the provisions of the Noxious Weed Eradication Act;
4. Develop a plan for noxious weed eradication in the eradication district;
5. Advise, consult and cooperate with agencies of this state and political subdivisions thereof, other states, the federal government and with affected groups;
6. Collect and disseminate information relating to noxious weed eradication;
7. Contract with agencies of this state and political subdivisions thereof, other states, the federal government and other organizations or persons to comply and fulfill its mission pursuant to the provisions of the Noxious Weed Eradication Act;
8. Hold public hearings regarding the assessment referenda or for other purposes consistent with the provisions of the Noxious Weed Eradication Act;
9. Designate one or more areas of this state as "elimination zones" where noxious weed eradication programs will be undertaken; and
10. Take such other actions deemed necessary by the board of directors to implement the provisions of the Noxious Weed Eradication Act.

B. 1. Pursuant to the authority granted by the Noxious Weed Eradication Act, except for instances of gross negligence,

individual criminal actions or acts of dishonesty, the board of directors and employees of the board of directors are not individually liable to a landowner or other person for:

- a. errors in judgment,
- b. mistakes, or
- c. omissions.

2. A member of the board of directors or an employee of the board of directors is not individually liable for an act or omission of another member or employee of the board of directors.

C. The board of directors shall serve without compensation but are entitled to reimbursement for reasonable and necessary expenses incurred in the discharge of their duties.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-51.9 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Noxious Weed Eradication Fund. The Noxious Weed Eradication Fund shall be administered by the board of county commissioners for the benefit of the landowners in the district to eradicate noxious weeds. The Noxious Weed Eradication Fund shall be established and maintained in a bank or other depository approved by the board of county commissioners.

B. The Noxious Weed Eradication Fund shall consist of:

1. All monies received by the board of county commissioners as proceeds from the assessment imposed pursuant to Section 8 of this act;

2. Interest attributable to investment of money in the Noxious Weed Eradication Fund; and

3. Monies received by the board of directors in the form of gifts, grants, reimbursements, or from any other source designated by law for deposit to the Noxious Weed Eradication Fund.

C. 1. Except as otherwise provided by law, the monies deposited in the Noxious Weed Eradication Fund shall at no time become monies of the county.

2. Any costs incurred by the board of directors pursuant to the provisions of the Noxious Weed Eradication Act shall not

exceed the actual expenditures made by the board of directors to implement and manage the Noxious Weed Eradication Act.

D. Monies in the Thistle Eradication Fund shall only be expended for:

1. Implementation and management of the Noxious Weed Eradication Act; and

2. Costs incurred by the board of directors and the board of county commissioners for the administration of the Noxious Weed Eradication Act.

E. Any debts or obligations of the eradication district shall not become or be construed to be obligations of the county.

F. The eradication district shall provide to the board of county commissioners an annual audit of the Noxious Weed Eradication Fund performed by a certified public accountant.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-51.10 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Each year, the board of directors shall determine the assessments for the ensuing year.

B. 1. Except as otherwise provided by this subsection, the county treasurer shall be responsible for the collection of any assessments and delinquent assessments made pursuant to the provisions of the Noxious Weed Eradication Act. Such assessments shall be collected as other special assessments according to law. The special assessment book maintained pursuant to subsection E of this section shall be the county treasurer's warrant and authority to demand and receive the assessments and delinquent assessments plus interest due and owing. Such assessments shall become due, payable and delinquent at the same time ad valorem taxes are due, payable and delinquent.

2. The board of directors may collect any assessments and delinquent assessments upon written notice to the county treasurer of such collection procedure and as provided for in the official plan of operation for the eradication district. Such assessments

shall be due, payable and delinquent on a specific date set by the board of directors annually.

C. Any assessments remaining unpaid after they become delinquent shall bear a penalty of one and one-half percent (1 1/2%) per month, or any part of a month, from the date of delinquency until paid.

D. 1. Assessments collected by the county treasurer shall be certified not later than the first of October of each year to the county treasurer of the county in which the property is situated.

2. Assessments to be collected by the board of directors which become delinquent shall be certified to the county treasurer of the county in which the district is situated.

E. 1. The certificate shall be substantially in the following form and shall set forth a table or schedule showing in properly ruled columns:

- a. the names of the owners of the property, which may be as they appear in the petition to establish the eradication district until evidence is furnished the district of a change in ownership,
- b. the description of the property opposite the names of the owners,
- c. the total amount of all assessments on the property,
- d. the total amount of all delinquent assessments on the property,
- e. a blank column in which the county treasurer shall record, as applicable, the delinquent assessments collected by the district or the assessments and delinquent assessments collected by the county treasurer,
- f. a blank column in which the county treasurer shall record the date of payment of the amount due and owing to the district, and
- g. a blank column in which the county treasurer shall report the name of the person who paid the amount due and owing to the district.

2. The certificate and report shall be prepared in triplicate in a book named "Assessment Book of Noxious Weed Eradication District No.\_\_\_\_, or District Name \_\_\_\_\_, \_\_\_\_\_ County, Oklahoma". This district number or name shall also be printed at the top of each page.

3. Two copies of the certificate shall be forwarded to the county treasurer of the county wherein the land is located. The county treasurer shall receive the certificate as a special assessment book, and shall certify it as other special assessment records.

4. It shall be unlawful for any county treasurer to accept payment of the ad valorem taxes levied against any property described therein until the owner has been notified that there is a special assessment noted in the special assessment book.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-51.11 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. If the county treasurer of each county in which lands of the district are located collects any assessments and delinquent assessments, the county treasurer shall make monthly reports of the sums collected. On the first day of each month, the county treasurer shall issue a warrant payable to the district for all sums collected. The county treasurer shall make a report to the eradication district, immediately after October 31 of each year, of the total sums collected and of the assessments not collected for the preceding year.

B. If the board collects assessments and delinquent assessments, the board of directors shall make monthly reports of the sums collected. The board shall make a report to the district, at the annual meeting of the electors, of the total sums collected and of the assessments not collected for the preceding year.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-51.12 of Title 2,

unless there is created a duplication in numbering, reads as follows:

A. 1. All assessments and all costs and expenses of collecting them shall constitute a lien on the lands against which the assessments have been levied. Such lien shall attach the date the assessment certificate is filed in the office of the county treasurer and shall continue until paid. Such lien shall be coequal with the lien of ad valorem taxes and all other taxes and special assessments and shall be prior and superior to all other liens.

2. Delinquent assessments to be collected by the county treasurer pursuant to Section 11 of this act shall be collected in the same manner and at the same time as delinquent ad valorem taxes are collected. Any tax sale shall include all charges, and such lien may be evidenced by any ad valorem tax sale certificate including said charge substantially in the form required by law.

3. For delinquent assessments to be collected by the board of directors pursuant to Section 11 of this act, any actions by the board of directors to enforce a lien established pursuant to this section shall be maintained in the same manner as actions to enforce a mortgage or deed of trust.

B. If any assessment is declared invalid, the board of directors shall immediately amend all proceedings, remedy all defects or irregularities and make and provide for the collection of new assessments.

C. Unless expressly declared to the contrary, no warranty deed or deed made pursuant to a judicial sale shall warrant against any portion of any assessment or assessments levied pursuant to this section except installments due before the date of such deed.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-51.13 of Title 2, unless there is created a duplication in numbering, reads as follows:

No claims for goods or services shall be paid by the eradication district until the claims have been allowed by the

board of directors. The claims shall be paid only upon warrants signed by the manager and countersigned by the secretary-treasurer. The warrants shall state the date authorized by the board of directors and for what purpose. No warrant shall be issued or obligation incurred unless the eradication district has sufficient funds on hand to pay such warrant when it is presented for payment. The eradication district shall keep records of each warrant as issued and as presented for payment, showing the date and amount of such warrant, to whom payable, the date of the presentation for payment, and the date of payment. All warrants shall be drawn payable to the claimant or bearer.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-51.14 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Upon petition by twenty-five percent (25%) of the electors of a district, the board shall call a special election to determine whether the district should be dissolved and a settlement of its financial obligations made.

B. The election shall be conducted as provided by the bylaws of the district. If the electors vote to dissolve the district, the board shall immediately notify all persons having claims against the district of the result of such election and shall adjust, settle and pay all claims.

C. Within thirty (30) days after all the property of the district has been disposed of and all of its obligations have been paid, the board shall file a certificate of dissolution in the office of the county clerk of each county in which the eradication district is located. The certificate shall be signed by the president and attested by the secretary-treasurer, with the seal of the district affixed. The certificate shall state that the district has disposed of its property, has been dissolved and shall describe the lands released from the eradication district.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-51.15 of Title 2,

unless there is created a duplication in numbering, reads as follows:

A. Except for contracts of employment, directors and employees shall not be interested, directly or indirectly, in any contract entered into by the eradication district unless the district court of the county wherein the principal office of the district is located considers the contract, the interest of such persons therein and approves the execution thereof.

B. Directors and employees shall not:

1. Directly or indirectly accept or request any compensation, gift, loan, entertainment, favor, or service given for the purpose of influencing such director and employee in the discharge of his official duties;

2. Directly or indirectly spend district funds or permit any property of the district to be used for political campaigns;

3. Engage in political campaigns in the name of the eradication district;

4. Disclose confidential information acquired by reason of their official positions to any person, group, or others not entitled to receive such confidential information; or

5. Use confidential information acquired by reason of their official position for their personal gain or benefit.

C. Every person who knowingly and willfully violates this section shall, upon conviction, be guilty of a misdemeanor, and shall be punished by the imposition of a fine of not more than One Thousand Dollars (\$1,000.00), or by confinement in the county jail for not more than six (6) months, or by both such fine and imprisonment.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-51.16 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. All owners of land shall be required to eradicate all noxious weeds growing upon their land. It shall be the duty of every landowner in this state to eradicate all noxious weeds

growing thereon so often in each and every year as shall be sufficient to prevent said noxious weeds from going to seed.

B. Upon complaint, or upon their own motion, the board of directors of the eradication district in which the noxious weeds are growing may cause such noxious weeds to be cut, mowed, sprayed or otherwise eradicated in accordance with the following procedure:

1. At least ten (10) days' notice shall be given to the owner of the property by certified mail with return receipt requested at the address shown by the current year's tax rolls in the county treasurer's office before the board of county commissioners holds a hearing or takes action. However, if the property owner cannot be located as shown by the return receipt, notice may be given by publication one time not less than ten (10) days prior to any hearing or action by the board of directors;

2. The owner of the property may give his written consent to the board of directors authorizing the cutting, mowing, spraying or other method of eradication of noxious weeds. By giving said written consent, the owner waives his right to a hearing by the board of directors;

3. A hearing may be held by the board of directors to determine whether:

- a. the defendant is the owner of the land, and
- b. the plant so designated is a noxious weed;

4. Upon a finding that the defendant is the owner of the property and the plant is a noxious weed, the agents of the county are granted the right of entry on the property for the cutting, mowing, spraying or other method of eradication of the noxious weed and performance of the necessary duties as a governmental function of the eradication district;

5. The board of directors shall determine the actual cost of such cutting, mowing, spraying or other method of eradication and any other expenses as may be necessary in connection therewith, including the cost of notice and mailing. The county clerk shall forward by certified mail with return receipt requested to the property owner at the address specified in paragraph 1 of this

subsection a statement of such actual cost and demanding payment. If the cutting, mowing, spraying or other method of eradication is done by the county, the cost to the property owner for said eradication shall not exceed the actual cost of the labor, maintenance, and equipment required. If the cutting, mowing, spraying or other method of eradication is done on a private contract basis, the contract shall be awarded to the lowest and best bidder; and

6. If payment is not made within thirty (30) days from the date of the mailing of the statement, the county clerk shall forward a certified statement of the amount of the cost to the county treasurer of the county in which the property is located and the same shall be levied on the property and collected by the county treasurer as other taxes authorized by law. The cost and the interest thereon shall be a lien against the property from the date the cost is certified to the county treasurer, coequal with the lien of ad valorem taxes and all other taxes and special assessments and prior and superior to all other titles and liens against the property, and the lien shall continue until the cost shall be fully paid. At any time prior to the collection as provided in this paragraph, the board of directors may pursue any civil remedy for collection of the amount owing and interest thereon. Upon receiving payment, if any, the county clerk shall forward to the county treasurer a notice of such payment and directing discharge of the lien.

SECTION 17. This act shall become effective September 1, 1994.

44-2-9144

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