

Article 7 Noxious Weed Control Act

76-7-1. Short title.

This act [[76-7-1](#) to [76-7-22](#) NMSA 1978] may be cited as the "Noxious Weed Control Act."

History: 1953 Comp., § [45-10-2](#), enacted by Laws 1959, ch. [243](#), § [1](#).

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 Am. Jur. 2d Agriculture § 51.

Liability of private landowner for vegetation obscuring view at highway or street intersection, 69 A.L.R.4th 1092.

3 C.J.S. Agriculture § 70.

76-7-2. Definitions.

As used in the Noxious Weed Control Act [[76-7-1](#) to [76-7-22](#) NMSA 1978]:

A. "noxious weed" means any weed or plant which the board of county commissioners acting as the governing body of the district, and with the advice of the county agent, declares to be harmful or to possess noxious characteristics;

B. "landowner" means any natural person who holds title to lands lying within a weed control district organized under the Noxious Weed Control Act who has attained the age of twenty-one years and is a resident of a county situated entirely or in part within a weed control district;

C. "land occupier" means any person, firm or corporation holding title to or being in possession of any lands lying within a district organized under the provisions of the Noxious Weed Control Act, whether as owner, lessee, renter, tenant or otherwise;

D. "resident taxpaying voter" means a qualified voter residing and owning taxable property within a noxious weed control district and who had duly rendered all taxes assessed against his property to the assessor for the district; and

E. "district" means a noxious weed control district organized under the provisions of the Noxious Weed Control Act.

History: 1953 Comp., § [45-10-3](#), enacted by Laws 1959, ch. [243](#), § [2](#).

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Warranty on sale of seed against presence of weed seeds, 62 A.L.R. 453, 117 A.L.R. 470, 168 A.L.R. 581.

Constitutionality of statutes requiring destruction of noxious weeds, 70 A.L.R.2d 852.

76-7-3. Noxious weed control districts; territorial limitations.

A. Noxious weed control districts may be organized under the provisions of the Noxious Weed Control Act [[76-7-1](#) to [76-7-22](#) NMSA 1978] to include the area of any county or

counties, or any portion thereof; except that no district shall contain less than one thousand, two hundred and eighty acres nor consist of territory in more than three counties. A district may include any political subdivision of the state or a defined district, or any parts thereof, but no land shall be included in more than one noxious weed control district.

B. The land composing any noxious weed control district need not be in one contiguous body but may consist of separate bodies of land separated by land not embraced in the district. No district provided for in the Noxious Weed Control Act shall embrace territory situated in more than one county except by a majority vote of the resident taxpaying voters residing within the territory in each county sought to be included in the district.

History: 1953 Comp., § [45-10-4](#), enacted by Laws 1959, ch. [243](#), § [3](#).

76-7-4. Petition for organization of noxious weed control district.

Petitions for the organization of a noxious weed control district shall designate the name of the district and the proposed area and boundaries to be included in the district. If the proposed district lies wholly within one county, the petition shall be presented to the board of county commissioners of the county; if the proposed district lies in more than one county, the petition shall be presented to the board of county commissioners of the county in which the largest area of the proposed district lies.

History: 1953 Comp., § [45-10-5](#), enacted by Laws 1959, ch. [243](#), § [4](#).

76-7-5. Notice of public hearing.

Upon receipt of a petition for the organization of a noxious weed control district the board of county commissioners wherein the petition is filed shall make an order setting the date for the hearing of the petition. The petition may be considered at a regular or special session of the board of county commissioners of the county wherein the petition is filed. The board shall issue a notice of public hearing to be published in a newspaper or newspapers of general circulation in each county in which the proposed district lies at least once a week for two consecutive weeks, with the last insertion of the notice not less than thirty days prior to the public hearing.

History: 1953 Comp., § [45-10-6](#), enacted by Laws 1959, ch. [243](#), § [5](#).

76-7-6. Public hearing upon petition; consideration by county commissioners.

A. Any person whose land is included in or would be affected by the creation of a noxious weed control district, may upon the day set for the public hearing appear and contest the creation of the proposed district and may offer testimony to show whether or not the district is necessary or would be of benefit to the land included therein.

B. The board of county commissioners shall approve the petition if, after a public hearing, it finds that the creation of the district would be a public benefit and that a substantial portion of the lands within the proposed district would be benefited by its creation. If the board of county commissioners finds that any lands included within the proposed district would not be benefited by its creation it shall exclude the lands and redefine the boundaries of the district accordingly. If the board of county commissioners should find that the proposed district would not be a public benefit, or of benefit to a substantial portion of the land sought to be included therein, it shall refuse the petition.

History: 1953 Comp., § [45-10-7](#), enacted by Laws 1959, ch. [243](#), § [6](#).

76-7-7. Order and notice of district election.

A. Upon determination by the board of county commissioners that the proposed noxious weed control district is necessary for the reclamation or safeguarding of the lands specified in the original or modified petition, they shall order an election for the purpose of submitting to the resident taxpaying voters the issue of whether or not the district shall be created.

B. Notice of the election for the creation of the noxious weed control district shall be published in a newspaper or newspapers of general circulation in the county or counties in which the proposed district lies at least once a week for two consecutive weeks, the last insertion to be not less than thirty days prior to the proposed referendum election.

History: 1953 Comp., § [45-10-8](#), enacted by Laws 1959, ch. [243](#), § [7](#).

76-7-8. Qualified voters in district elections.

A. At any election for the consideration of a proposed noxious weed control district, only the following persons shall be eligible voters:

(1) all persons who are owners of agricultural land within the district or have evidence of title to the lands or who are purchasers under contract of lands within the district;

(2) all resident entrymen of federal public lands and lessees of state agricultural lands within the district;

(3) any authorized officer or agent of a corporation owning land within the proposed district. He may cast the ballot of the corporation in all weed control district elections;

(4) all minors who are the owners of agricultural land within the district and who are entitled to vote under the provisions of the Noxious Weed Control Act [[76-7-1](#) to [76-7-22](#) NMSA 1978]. Their vote shall be cast by their father, mother or duly appointed guardian in the order named, and if they have no father, mother or duly appointed guardian, the minor may cast his own ballot; and

(5) any owner of agricultural lands in the district voting by proxy. A landowner may have his vote cast at any election by another person entitled to vote in the election, and whom he may appoint as his proxy. Designation of a proxy for the purposes of district voting shall be in writing and signed by the person authorizing the proxy. Every proxy shall be attached to and deposited with the ballot cast by the designated voter, and the ballot shall be signed in the name of the person authorizing the proxy and the proxy himself. Each proxy shall contain an official acknowledgment duly signed by a person authorized to take acknowledgments in this state.

B. The general election laws of the state, insofar as applicable, except for the requirements for registration under Section 3-2-49 NMSA 1953 [repealed] and residence in state, county and precinct under Section 3-2-51 NMSA 1953 [repealed] and except as otherwise provided in the Noxious Weed Control Act, shall govern all elections under the Noxious Weed Control Act.

History: 1953 Comp., § [45-10-9](#), enacted by Laws 1959, ch. [243](#), § [8](#).

Bracketed material. — The bracketed material in Subsection B was inserted by the compiler. It was not enacted by the legislature, and it is not part of the law. Sections 3-2-49 and 3-2-51 NMSA 1953, were repealed by Laws 1969, ch. [240](#), § [451](#). For present provisions, see [1-1-4](#), [1-4-1](#) and [1-4-2](#) NMSA 1978.

76-7-9. County commissioners to furnish ballots; voting by mail permitted.

A. The board of county commissioners shall furnish sufficient printed ballots for all voters at each election in the district. The ballots for the election shall contain a place for the elector to vote for or against the formation of the proposed district. Each voter shall sign his name on a line at the bottom of the ballot before voting or casting the ballot.

B. Any qualified voter desiring to vote by mail may do so by preparing his ballot in the manner prescribed in this section, and affixing his signature thereon and mailing or delivering the ballot in a sealed envelope to the judge of the election of the voting district; provided, however, every ballot delivered or mailed to the election judges must reach the election judges not later than 6:00 p.m. on the day of the election.

History: 1953 Comp., § [45-10-10](#), enacted by Laws 1959, ch. [243](#), § [9](#).

76-7-10. Form of ballots.

The ballots for the creation of a weed control district shall be printed in the following form:

BALLOT

On the Question of Formation of Noxious Weed Control District.

(Place "X" in one of the boxes below)

For Noxious Weed Control District

Against Noxious Weed Control District

Signature of voter

History: 1953 Comp., § [45-10-11](#), enacted by Laws 1959, ch. [243](#), § [10](#).

76-7-11. Conduct of election; declaration of results.

A. The board of county commissioners having jurisdiction over the election shall create and define, by order, the voting precincts in the proposed district, and shall name the polling places within each district. The board of county commissioners shall also select and appoint the judges and other necessary officers for the conduct of the election.

B. Immediately after the election, the officers holding the election shall make returns of the results to the board of county commissioners having jurisdiction. The board of county commissioners shall canvass the vote and returns and enter an order declaring the results of the election. If it is found that a majority of the votes cast are in favor of the creation of the district, the board of county commissioners shall enter an order declaring the establishment of the district. If the proposed district embraces more than one county, the board of county commissioners having jurisdiction shall enter an order declaring the establishment of the district only in the territory included in each county in which the majority of the votes cast were in favor of its creation. A copy of the order shall be transmitted to the county clerk of each county in which a portion of the district lies and shall be filed by him as a public record.

History: 1953 Comp., § [45-10-12](#), enacted by Laws 1959, ch. [243](#), § [11](#).

76-7-12. District governing body.

The governing body of the noxious weed control districts shall be governed by [sic] the board of county commissioners of the county wherein the largest area of the proposed district is situated.

History: 1953 Comp., § [45-0-13](#), enacted by Laws 1959, ch. [243](#), § [12](#).

76-7-13. Powers of district governing body.

The district governing body shall have the following powers:

- A. to determine, with the advice of the county agent, which noxious weeds shall be subject to control;
appropriate method;
- C. to prescribe the specific areas within the district on which the control measures are to be carried out;
- D. to prescribe the period within which control measures are to be carried out; and
- E. to take necessary action to effect the purposes of the Noxious Weed Control Act [[76-7-1](#) to [76-7-22](#) NMSA 1978].

History: 1953 Comp., § [45-10-14](#), enacted by Laws 1959, ch. [243](#), § [13](#).

76-7-14. Rules and regulations of district; penalty.

A. The district governing body is specifically authorized to promulgate rules and regulations requiring the cleaning of farm implements and machinery which are brought into the district or which are moved from one location to another within the district and to prescribe the method of disposition of materials taken from farm implements and machinery.

B. Before the rules and regulations of the district shall become effective, a copy of all the rules and regulations shall be filed with the state law librarian and published, at least once a week for four consecutive weeks, in a newspaper or newspapers of general circulation in the county or counties in which the district lies.

C. Any person who violates any provision of the rules and regulations of the district after the rules have been duly filed and published shall be, upon conviction, punished by a fine of not more than two hundred and fifty dollars (\$250).

History: 1953 Comp., § [45-10-15](#), enacted by Laws 1959, ch. [243](#), § [14](#).

Cross references. — For State Rules Act, see [Chapter 14, Article 4](#) NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 Am. Jur. 2d Agriculture § 51.

3 C.J.S. Agriculture § 72.

76-7-15. Notice to land occupiers of control measures; inspection of property; failure to comply with order.

A. The chairman of the board of county commissioners governing the noxious weed control district shall give written notice to each land occupier within the district informing him of the control measures that are in effect on his land and all other necessary information to enable the land occupier to carry out the measures.

B. It is the duty of each land occupier to comply with the control measures prescribed by the governing body and the responsibility of the appropriate county officials to comply with the control measures determined by the governing body in order to effectuate noxious weed control measures on rights of way of all public roads and other public lands within the district.

C. The governing body of the district, if it deems advisable, may appoint an inspector to serve as an officer of the governing body. The inspector shall have the right to enter upon any

land within the district to determine whether control measures are necessary and to determine whether control measures prescribed by the governing body are being carried out.

D. If it is found that a land owner or occupier is not complying with the governing body's directions, the governing body shall give him written notice ordering him to comply within a stated time. If he fails to comply with the order, the governing body may file a suit for a mandatory injunction in the district court of the county in which the land is situated to compel him to comply with the order. Any land owner or occupier against whom an injunction is issued shall, upon a finding of the court that the land owner or occupier unreasonably refused to comply with the governing body's order and that the control measures are appropriate, be liable for all costs of the suit and for a reasonable attorney fee to be fixed by the court. The court shall upon a proper determination issue an injunction ordering compliance with the governing body's directions.

E. Any adjoining land owner to a county or state road situated within the noxious weed control district may petition the governing body of the district to spray or take weed control measures of noxious weed growing upon adjoining rights of way. Upon determination by the governing body that the control measures requested are necessary, the governing body shall order appropriate action to be taken to control noxious weeds. If the lands or rights of way are under the control of the department of transportation, the governing body shall first make formal application to the state transportation commission requesting the department of transportation to perform the necessary control measures. If the department of transportation fails or refuses to take appropriate action, the governing body of the district shall perform the necessary work with district facilities. In the event sufficient funds are not available to finance the control measures by the district, upon the rights of way, the adjoining land owner or occupier shall be authorized by the governing body to take appropriate action, and he shall be reimbursed from funds of the district as soon as sufficient funds become available. The governing body shall petition the department of transportation for reimbursement of necessary and actual expenses of the noxious weed control measures taken upon the state highway rights of way or lands.

History: 1953 Comp., § [45-10-16](#), enacted by Laws 1959, ch. [243](#), § [15](#); 2003, ch. [142](#), § [96](#).

The 2003 amendment, effective July 1, 2003, substituted "governing body" for "board" throughout the section; and substituted "state transportation commission" for "state highway commission" in Subsection E.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 Am. Jur. 2d Agriculture §§ 44, 45, 50.

3 C.J.S. Agriculture § 70.

76-7-16. Levy of uniform assessments; assessor; collector; annual financial report.

A. The governing body of the district may levy an annual uniform assessment against the land within the district not to exceed five cents (\$.05) an acre for the purpose of paying the expenses of the district. The county treasurer of each county wherein a weed control district is

located shall assess and collect the levy at the same time he collects the ad valorem taxes within the county.

B. The moneys collected for the district shall be deposited in the district depository selected by the board.

C. The chairman of the governing body of the district shall file an annual report with the county clerk of each county in which any part of the district lies, before July 1 of each year, showing the total amount received, and an itemized statement of the amounts expended during the preceding year, together with the balance remaining on hand.

History: 1953 Comp., § [45-10-17](#), enacted by Laws 1959, ch. [243](#), § [16](#).

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 Am. Jur. 2d Agriculture § 9.

76-7-17. Enforcement of assessments.

Assessments by local district assessors shall be subject to the same delinquency period, discounts, penalties and interest as are applied to the collection of ad valorem taxes. The district governing body shall refer a delinquent assessment to a district attorney in the county of the land occupier's residence. It shall be the duty of the district attorney to sue and obtain judgment and to enforce and satisfy the judgment so obtained. All levies assessed under the provisions of the Noxious Weed Control Act [[76-7-1](#) to [76-7-22](#) NMSA 1978] shall be deemed special levies on specific property and shall not be subject to the limitations of [Section 72-4-11](#) New Mexico Statutes Annotated, 1953 Compilation [repealed] or other statutory limitations.

History: 1953 Comp., § [45-10-18](#), enacted by Laws 1959, ch. [243](#), § [17](#).

Bracketed material. — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature, and it is not part of the law. Section 72-41-11, 1953 Comp., was repealed by Laws 1974, ch. [92](#), § [34](#) (amending Laws 1973, ch. [258](#), § 156), effective January 1, 1975.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 Am. Jur. 2d Agriculture § 9.

76-7-18. District expenses; employees.

The governing body of the district may incur all necessary expenses, within the limitations of the district assessment collections, which are in keeping with the purposes of the Noxious Weed Control Act [[76-7-1](#) to [76-7-22](#) NMSA 1978]. The board may employ one or more inspectors, if it deems necessary, for the purpose of inspecting the lands within the district to determine in what areas control measures are being carried out. The board may also employ clerical help as may be necessary in the discretion of the board.

History: 1953 Comp., § [45-10-19](#), enacted by Laws 1959, ch. [243](#), § [18](#).

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 Am. Jur. 2d Agriculture §§ 46, 49 to 51.

76-7-19. Addition or exclusion of lands of district.

A. Upon petition to the district governing body, by one or more landowners residing outside the district, asking for inclusion into the district of specified lands, the governing body of the district shall examine the petition, and after appropriate public hearings make a determination upon whether the petition shall be granted. The district governing body shall have the authority to declare the extension of the boundaries of the district to include the area designated in the petition or to accept any portion of the area included in the petition, for inclusion in the district. All lands added to any existing district shall at the next assessment date automatically be subject to any special levy on taxable property approved for the district for the purposes of the Noxious Weed Control Act [[76-7-1](#) to [76-7-22](#) NMSA 1978].

B. Upon petition to the district governing body by ten or more landowners residing within the district and asking for the detaching of a specified area from inclusion in the district, the governing body of the district shall examine the petition, and after appropriate public hearing make a determination upon whether the petition shall be granted. The governing body of the district may order the lands included in the petition to be excluded from the area of the district, provided all current assessments have been paid, and the detaching of the lands will not result in the total area of the district containing less than the prescribed minimum acreage of one thousand, two hundred and eighty acres.

History: 1953 Comp., § [45-10-20](#), enacted by Laws 1959, ch. [243](#), § [19](#).

76-7-20. Petition to dissolve district; notice of election; conduct of election.

A. Upon petition, presented to the governing body of the noxious weed control district, signed by one-quarter of the landowners or land occupier's [occupiers] residing within the district and asking for an election upon a proposal to dissolve the district, the board of directors shall order an election thereon to be held not more than ninety days from the date the petition is received.

B. Notice by publication of the election shall be given by the chairman of the governing body of the district at least twice, with at least seven days between the two publications, in a newspaper or newspapers of general circulation published in each county in which the district lies. Notice of publication shall contain a statement of the purpose of the election and the time and place of holding the election.

C. The board shall designate the polling place or places within the district, taking into consideration the convenience of the voters, and shall also select and appoint the judges and other necessary officers of the election. None but resident taxpaying voters of the district shall be entitled to vote at the election.

History: 1953 Comp., § [45-10-21](#), enacted by Laws 1959, ch. [243](#), § [20](#).

Bracketed material. — The bracketed material in Subsection A was inserted by the compiler. It was not enacted by the legislature, and it is not part of the law.

76-7-21. Results of election to dissolve noxious weed control district.

Returns of the election shall be made to the board of county commissioners acting as governing body of the district, which shall canvass the returns and enter an order declaring the

results of the election. If a majority of the votes cast at the election are against dissolution of the district, no further election on the proposition shall be held for a period of two years thereafter. If a majority of the votes cast are in favor of the dissolution of the district, the board shall enter an order declaring the district to be dissolved, and thereafter the board shall not exercise any further powers except to terminate the affairs of the district.

History: 1953 Comp., § [45-10-22](#), enacted by Laws 1959, ch. [243](#), § [21](#).

76-7-22. Termination of the affairs of the district.

If the results of the election require the dissolution of the district and there is not on hand sufficient money to pay off all claims against the district and if the annual assessments already levied will not provide sufficient funds for the payment of claims, the board shall have the authority to levy and cause to be collected further annual assessments but only in an amount as may be necessary to settle the claims against the district. Any money remaining on hand after all claims have been settled shall be paid over rateably to the county treasurer of each county in which the district lies in the proportion which the territory in each county bears to the total area of the district, and shall be placed by the treasurer in the general fund of the county.

History: 1953 Comp., § [45-10-23](#), enacted by Laws 1959, ch. [243](#), § [22](#).