



# Model Invasive Plant Management Act

North American Weed Management Association

## Situation

There is a major gap in authorities, commitment and funding of most State or Provincial and local programs for the prevention control, management and restoration related to invasive plants. Only thirty-six states have a listing of noxious plants. Many of these states do not have local weed control entities. Most laws address invasive plants only after they become well established. Very little mention is made of restoration. These shortcomings are being recognized and efforts are being made to address them. Some states and provinces have made recent revisions to their laws and regulations, have begun to make fuller use of their existing authorities and/or are planning to do so.

## Halting the Invasion-State Tools for Invasive Species Management

The 2002 publication of the Environmental Law Institute, *Halting the Invasion-State Tools for Invasive Species Management*, [http://www.elistore.org/reports\\_detail.asp?ID=10678](http://www.elistore.org/reports_detail.asp?ID=10678), evaluates state authorities for addressing invasive species and makes recommendations for their improvement. Invasive plants are one of the categories covered. It does an excellent job evaluating the current state laws and regulations. It does not evaluate how well states are implementing these laws and regulations or what other programs or tools they may have. As this report points out, even when authorities exist they may not be implemented. It states on page 24 ***"It is important to note that while state laws and policies may exist on the books, they may not be adequately funded or utilized to the full extent of their authority. There is a wide range of tools available at the state level to deal with invasive species. Whether or not states choose to take advantage of these tools is to a large degree dependent on political will."***

6/10/2005

In any case, states should utilize this report to aid them in evaluating their tools and arrive at what improvement they choose to make in managing their invasive plants as well as the other invasive species. The report recommends that states evaluate which of three standards (gold, silver, or bronze) their invasive species laws and regulations currently meet. These standards can be used by states to determine how strong their existing programs are, where they have significant gaps, and where improvements can be made. It would also be a helpful tool for the Canadian Provinces in looking at what is outlined as standards.

## Noxious Weed Control & Eradication Act of 2004

This Act was passed in 2004. It would provide matching grant funds to the local level for fighting weeds. There are only a handful of states that have a noxious weed act that have the authority to receive and distribute these funds.

## Invasive Plant Management Act

NAWMA has assembled this Invasive Plant Management Act as a model to strengthen the efforts at the local level and provide better coordination between local, state or provincial and federal efforts. This model was developed to be helpful to states and provinces and to those who are interested in improving invasive plant management as they address authority shortcomings and/or lack of implementation of authorities. States/Provinces may use this Model Act along with the publication "Halting the Invasion-State Tools for Invasive Species Management" in evaluating and making improvements in their authorities.

## The Model Act

This is not a static document. Plans are to update it as a result of the users comments and input. We are not aware of all the planned and ongoing efforts to strengthen state/provincial and local invasive plant

management authorities and/or implementation. We are seeking information on these efforts so that we might share them with others. This document is designed to be used as a working tool as you review your state or provincial law(s). We have attempted to do some of the work for you, by listing what we consider:

1. Key components,
2. Desirable intent of each component, and
3. Referencing state/provincial laws, rules and regulations.

The referenced sections of laws and rules are not quoted. These sections will have to be viewed by clicking on the link to the referenced law. Links to specific state and local laws and regulations on noxious weeds can be found at <http://www.invasivespecies.gov/laws/main.shtml#state>. States and provinces will need to determine what wording and format is appropriate for them and if additional sections need to be included to address specific issues concerning their state or provincial programs.

## Key Components

Following is a list of components of an Invasive Plant Management Act that NAWMA feels are important.

1. **Landowner responsibility for noxious weed control**
2. **Local weed management entities required throughout the state/province with Support and oversight by a state/provincial agency**
3. **Requirement for development of county or local weed control strategies**
4. **Requirement for development of state weed control strategies**
5. **Noxious Weeds Designation Process**
6. **Requirements for a strong awareness program**
7. **Emphasis on prevention**
8. **Effective regulatory Control**
9. **Both State and County funding**
10. **Provisions for State to handle pass through grant funds to local level**
11. **Continuing education requirements for manger of local weed control entity.**
12. **Appeal process.**
13. **State/Provincial Advisory committee.**
14. **Cooperation with federal and state agencies**
15. **Control of noxious weeds on public lands**

## Desirable Intent and References for Each Component

Following is a description of the desirable intent for each of the key components. State/Provincial laws are referenced that tend to meet the described intent. In some key components there is also included a NAWMA model component.

### 1. Landowner responsibility for noxious weed control

*The Act needs to clearly place the responsibility of controlling noxious weeds on the landowner. It would also be desirable to require that a purchaser of the land to be notified of the existence or potential existence of noxious weeds on the property.*

NEBRASKA 2-952. Methods.

<http://www.agr.state.ne.us/regulate/bpi/nwp/noxact.htm>

MONTANA 7-22-2116. Unlawful to permit noxious weeds to propagate

[http://data.opi.state.mt.us/bills/mca\\_toc/7\\_22\\_21.htm](http://data.opi.state.mt.us/bills/mca_toc/7_22_21.htm)

### 2. Local weed management entities required throughout the state/province with support and oversight by a state/provincial agency.

*The most effective weed control/management laws have a local weed management entity with state or provincial level agency providing support and oversight.*

#### Local Weed Management Entity

*A local weed management entity is key to getting noxious weed management implemented on the ground. It is through their activities that both public and private landowners learn the importance of managing noxious weeds and voluntarily comply with the noxious weed laws. They are also the most effective in utilizing regulatory controls when needed.*

MONTANA 7-22-2102.

[http://data.opi.state.mt.us/bills/mca\\_toc/7\\_22\\_21.htm](http://data.opi.state.mt.us/bills/mca_toc/7_22_21.htm)

#### Support and oversight by a state/provincial agency

*It is important to have strong noxious weed management programs from one local entity to the next. The state/province is a critical*

*player in the implementation of a uniform and effective program throughout the state/province. An agency needs to be assigned the responsibility to assure that each local entity is performing their required duties and to assist them in doing so. They also need to carry out state/province-wide functions.*

UTAH 4-17-3.

[http://www.le.state.ut.us/~code/TITLE04/htm/04\\_11004.htm](http://www.le.state.ut.us/~code/TITLE04/htm/04_11004.htm)

IDAHO 22-2404. STATE POWERS.

<http://www3.state.id.us/cgi-bin/newidst?sctid=220240004.K>

### 3. Requirement for development of county or local weed control strategies

*The noxious weed management program of county or local weed control entity should be based on a plan approved by the local governing body. It should specify the goals and priorities of the program, review the distribution and abundance of each noxious weed species known to occur within the area of responsibility and specify the locations of new infestations and areas particularly susceptible to new infestations, estimate the personnel, operations, and equipment costs of the proposed program.*

MONTANA 7-22-2121. Weed management program.

<http://data.opi.state.mt.us/bills/mca/7/22/7-22-2121.htm>

COLORADO 35-5.5-105. Noxious weed management - powers of county commissioners.

[www.ag.state.co.us/DPI/weeds/statutes/weedlaw.PDF](http://www.ag.state.co.us/DPI/weeds/statutes/weedlaw.PDF)

### 4. Requirement for development of state/province weed control strategies

*State/provinces need to take a strategic approach to noxious weed management problems of state/province significance, addressing environmental and agricultural*

weeds equally. The strategy should describe the nature of the problem, discuss why existing weed management measures are not adequate, list the roles and responsibilities of government, community, landowners and land users. It should list goals with underpinning objectives and strategies to guide the state/province and local entities in a coordinated and directed approach of implementing the act.

AUSTRALIA National Weeds Strategy  
<http://www.weeds.org.au/nws.htm>

## 5. Noxious Weeds Designation Process

The designation process should include risk assessment, be done by regulation not legislation including a process for adding or deleting. A classification system should be developed to describe the status and appropriate action levels required for each class of noxious weeds.

**The designation of a noxious weed** should be a consultative and objective process. A Weed Risk Assessment should identify specific "classes" of invasiveness of potential noxious weeds present in the state/province or in surrounding states/provinces by land use, i.e. cropland, grazing land and natural areas. An advisory committee should review the results of the assessment and recommend what weed(s) should be considered for designation. The designation should begin with a statement of intent to designate a species as a noxious weed. The statement of intent should include general information on the plant species in question including the results of the objective Weed Risk Assessment system, and information on economic, environmental, and social effects/impacts. Appropriate regulatory/management actions should be indicated for the plant species and the land use.

**Broad conditions** for declaring a plant as a noxious weed under legislation need to include potential adverse impact on productive capacity, natural or physical resources, genetic diversity, or maintenance of ecological processes. The statement of intent to designate the species should be

advertised and made available for a public comment period.

**An emergency declaration mechanism** should also be included allowing a plant to be declared rapidly with an interim statement of intent. This should be followed by completion of all the steps of the formal process of 'intent to designate' within a set time period or the declaration lapses.

**Removal of a designation** should use the same scientific/consultative process

### **Species Specific Weed Management Plans should be Required**

Once a plant is designated a noxious weed the legislation should require that a Weed Management Plan be prepared for the weed. A designation should not persist without such a plan. A period of 12 months could be allowed to prepare such a plan. The development of this plan should have a period of public consultation.

A Weed Management Plan must should the name of the target weed, area of the State/Province covered by the plan, distribution and extent of the weed, the reasons for declaring the weed and include restrictions and measures required to control, eradicate or restrict the spread of a weed. Restrictions on import, distribution and sale should also be included. These plans should be reviewed at least every 5 years.

STATE OF TASMANIA, Australia Weed Management Act 1999.  
<http://www.dpiwe.tas.gov.au/inter.nsf/WebPages/TPRY-4ZV4BS?open>

**Classification system** The status of designated noxious weeds may range from not known to be present to being established and widespread in the state/province. Noxious weeds also vary in their invasiveness by land use, methods to eradicate, manage, control or restoration requirements. Appropriate and generally accepted regulatory actions need to be utilized recognizing the status and management requirements for the noxious weed. Therefore, it would be desirable to

have a classification system to describe the status and appropriate management /regulatory action levels for each category of noxious weeds.

Category 1. *Category 1 noxious weeds are weeds that are currently established and generally widespread in the state/province. Management criteria includes awareness and education, containment, and suppression of existing infestations and prevention of new infestations. These weeds are capable of rapid spread and render land unfit or greatly limit beneficial uses.*

MONTANA

<http://agr.state.mt.us/programs/asd/noxweeds.shtml>

Category 2. *Category 2 noxious weeds have recently been introduced into the state/province or are rapidly spreading from their current infestation sites. These weeds are capable of rapid spread and invasion of lands, rendering lands unfit for beneficial uses. Management criteria includes awareness and education, monitoring and containment of known infestations and eradication where possible.*

MONTANA

<http://agr.state.mt.us/programs/asd/noxweeds.shtml>

**Category 3.** *Category 3 noxious weeds have not been detected in the state/province or may be found only in small, scattered, localized infestations. (Federal Noxious Weeds could be included in this category by reference. If this is done, the state would be able to immediately respond if one of these weeds is found in the state. It would also facilitate coordination of eradication efforts with APHIS)*

MINNESOTA

<http://www.mda.state.mn.us/appd/weeds/noxiousplantsminnesota.pdf>

NORTH CAROLINA

<http://www.agr.state.nc.us/plantind/plant/weed/nxwdrg.htm>).

*Management criteria includes awareness and education, early detection and immediate action to eradicate infestations. These weeds are known pests in nearby states/provinces and are capable of rapid*

*spread and render land unfit for beneficial uses.*

MONTANA

<http://agr.state.mt.us/programs/asd/noxweeds.shtml>

Category 4. *Category 4 noxious weeds are environmental weeds that are strongly invasive in natural areas. Management criteria includes awareness and education, restoration and promotion of the use of native plants.*

NAWMA

## 6. Requirements for a strong awareness program

Laws are only effective if almost all the people voluntarily comply with the law. A strong awareness program should be designed to gain acceptance and compliance with the noxious weed control laws. The law and/or guidance of the state/province should require an information program be a key part of state/province and local level weed control plans.

NORTH DAKOTA 63-01.1-03. 4. State weed control authority - Commissioner of agriculture – Powers and duties.

[www.state.nd.us/lr/cencode/T63C011.pdf](http://www.state.nd.us/lr/cencode/T63C011.pdf)

COLORADO 35-5.5-108.5. Responsibilities related to eradication of designated noxious weeds - commissioner - local governing bodies - affected landowners. (l)

[www.ag.state.co.us/DPI/weeds/statutes/weedlaw.PDF](http://www.ag.state.co.us/DPI/weeds/statutes/weedlaw.PDF)

## 7. Emphasis on prevention

*Preventing the introduction and establishment of invasive plants is the most proactive and cost-effective approach to noxious weed management. By having a good risk assessment system in place, states/provinces can key in on the invasive plants that have the most likelihood to establish and adversely impact their economic base and/or environment. Actions then can be taken to prevent their introduction, transport and spread. It is also important that provisions are in place to immediately eradicate newly found introductions of these plants and to carry out any needed restoration..*

### **Early Detection**

*Local weed management entities need to have the authority to survey, inspect and map public and private lands for invasive plants and place priority on inspecting areas that are most susceptible to invasion by new invaders .*

UTAH 4-17-6.

[www.le.state.ut.us/~code/TITLE04/hm/04\\_11009.htm](http://www.le.state.ut.us/~code/TITLE04/hm/04_11009.htm)

### **Rapid Response**

*The act needs to authorize emergency powers to rapidly respond to outbreaks of invasive plants that may quickly cause widespread damage or become permanently established. These powers should enable the state to increase its authority when facing an impending infestation and to provide for better coordination with APHIS. Components of emergency powers may include the ability to eradicate invasive plants and emergency funds to rapidly respond to early detection.*

COLORADO 35-5.5-108.5. Responsibilities related to eradication of designated noxious weeds - commissioner - local governing bodies - affected landowners. (3) (d) IDAHO 22-2404. STATE POWERS(r).

<http://www3.state.id.us/cgi-bin/newidst?sctid=220240004.K>

IDAHO 22-2404. STATE POWERS(w).

<http://www3.state.id.us/cgi-bin/newidst?sctid=220240004.K>

### **Control of movement of infested articles**

*Provisions should be included to require treatment of infested articles prior to moving or not to allow the movement of the article.*

NORTH DAKOTA 63-01.1-12.1. Quarantine period - Materials or farm products and area defined.

<http://www.ndweeds.homestead.com/index.html>

NORTH DAKOTA 63-01.1-14. Weed control enforcement responsibilities of other agencies.

<http://www.ndweeds.homestead.com/index.html>

### **Noxious Weed Free Certification Program**

*States/Provinces should have weed free certification programs to help prevent the*

*spread of noxious weeds with the movement of forage and mulch.*

MONTANA Admin. R.4.5. 303

### **Quarantine provisions**

The act should provide for the use of quarantines for areas infested with invasive plants or articles contaminated with seed or other reproductive parts parts of invasive plants. The implementation of quarantines, as needed, will help contain potential infestations so that they do not become widespread.

WASHINGTON RCW 17.10.210

Quarantine of land—Order—Expense.

[www.nwcb.wa.gov/weed\\_laws/17-10.pdf](http://www.nwcb.wa.gov/weed_laws/17-10.pdf)

COLORADO 35-5.5-116. Noxious weed management fund – creation – allocation of funds. (5)

<http://www.ag.state.co.us/dpi/weeds/statutes/weedlaw.PDF>

WYOMING 11.5.116. Quarantine by director; request by district.

<http://legisweb.state.wy.us/statutes/titles/title11/chapter05.htm>

### **Effective regulatory Control**

The local weed control entity needs to have the authority to enter all lands to make inspections and collect samples. When a land owner, public or private, is found to be in violation, due notification is made with recommended controls. If the landowner does not take control authority is needed to make enforced control, billing the landowner for costs and placing a lien on the property if the bill is not paid. It is also desirable to have a penalty provision as an option.

### **Entry upon land**

*There should be authority to enter upon on all lands, both public and private for the purposes of implementing this act.*

NEBRASKA 2-961. Entry upon land.

<http://www.agr.state.ne.us/regulate/bpi/nwp/noxact.htm#2961>

ALBERTA, CANADA WEED CONTROL ACT CHAPTER W-5 11 RIGHT OF ENTRY TO INSPECT

[http://www1.agric.gov.ab.ca/\\$department/deptdocs.nsf/all/acts4257?opendocument#12](http://www1.agric.gov.ab.ca/$department/deptdocs.nsf/all/acts4257?opendocument#12)

NORTH DAKOTA 63-01.1-03. State weed control authority – Commissioner of

Agriculture – Powers and duties.  
[www.state.nd.us/lr/cencode/T63C011.pdf](http://www.state.nd.us/lr/cencode/T63C011.pdf)

### **Notification**

*Due notification to a landowner having an invasive plant infestation is needed prior to any enforcement action. It facilitates the process to have several options for notification. Some options used are: Certified return receipt mail, publication in a newspaper, service by a sheriff, and posting the site.*

IDAHO 22-2405. COUNTY DUTIES. (3)  
<http://www3.state.id.us/cgi-bin/newidst?sctid=220240005.K>  
ALBERTA, CANADA WEED CONTROL ACT CHAPTER W-5 12 NOTICE TO REMEDY WEED PROBLEM  
[http://www1.agric.gov.ab.ca/\\$department/deptdo.cs.nsf/all/acts4257?opendocument#12](http://www1.agric.gov.ab.ca/$department/deptdo.cs.nsf/all/acts4257?opendocument#12)

### **Enforcement**

*It is necessary to have the authority to enforce control on infestations when landowners do not voluntarily comply.*

IDAHO 22-2405. COUNTY DUTIES. (4)  
<http://www3.state.id.us/cgi-bin/newidst?sctid=220240005.K>

### **Penalty**

*A penalty that results in a fine for not controlling an invasive plant infestation is a desirable to have as an option.*

COLORADO 35-5.5-118. Civil penalties.  
[www.ag.state.co.us/DPI/weeds/statutes/weedlaw.PDF](http://www.ag.state.co.us/DPI/weeds/statutes/weedlaw.PDF)

### **Special assessments**

*When a landowner does not pay the cost of the enforced control a lien should be filed on the property and payable the same as taxes.*

UTAH 4-17-8. Noxious weeds -- Failure to control after notice a nuisance -- Notice and hearing -- Control at county expense -- Owner liable for county costs -- Charges lien against property.  
[www.le.state.ut.us/~code/TITLE04/htm/04\\_1101\\_1.htm](http://www.le.state.ut.us/~code/TITLE04/htm/04_1101_1.htm)

## **8. Both State and County funding**

*The most effective programs have funding from both the state and local level.*

### **State Funding**

*It is desirable to have earmarked funds for the state/province noxious weed program, not subject to the whims of politicians. It is also desirable to have provisions for funding of local programs.*

NEBRASKA 2-958. 2-958 Noxious weed control fund; authorized; Noxious Weed Cash Fund; created; use; investment. (2)  
[statutes.unicam.state.ne.us/Corpus/statutes/chap02/R0209058.html](http://statutes.unicam.state.ne.us/Corpus/statutes/chap02/R0209058.html)

### **County Funding**

Adequate funding of the local weed control entity is essential. They are the entity that works with the landowners to control and manage invasive plants. Sources of funding should include local funding from dedicated mill levy, state funds and grant monies.

MONTANA 7-22-2141. Noxious weed fund authorized. (1)

(2)<http://data.opi.state.mt.us/bills/mca/7/22/7-22-2141.htm>

MONTANA 7-22-2120. Funding -- reporting requirements -- emergency exemption.

(1)<http://data.opi.state.mt.us/bills/mca/7/22/7-22-2120.htm>

COLORADO 35-5.5-119. County funding.  
<http://data.opi.state.mt.us/bills/mca/7/22/7-22-2121.htm>

## **9. Provisions for State to handle pass through grant funds to local level**

*Laws and regulations should have language that will allow the receiving, administration and distribution of federal grant funds. Following are examples of state legislation and rules and regulations that may be helpful to states to prepare for the utilization of federal grant funds and implementation of a matching grant program.*

### **Receiving Funds from any Source**

*The act should allow for receiving funds from any source including Federal pass-thru funds.*

IDAHO 22-2404. STATE POWERS. (1), (o)  
<http://www3.state.id.us/cgi-bin/newidst?sctid=220240004.K>

### **Administration of a Grant Program**

*Provisions for the administration of a grant program should be outlined by law and or regulations.*

MONTANA 80-7-814. Administration and expenditure of funds. (2)

COLORADO 35-5.5-116 - Noxious weed management fund - creation - allocation of funds.

### **10. Continuing education requirements for manager of local weed control entity.**

*A key to implementation of a strong local weed management program is the leadership given by the leader of the local weed management entity. A required continuing education program aids in improving the ability of those leaders to perform their duties.*

NEBRASKA 2-954.02. Superintendent; continuing education.

[www.agr.state.ne.us/regulate/bpi/nwp/noxact.htm#295402](http://www.agr.state.ne.us/regulate/bpi/nwp/noxact.htm#295402)

WYOMING Chapter 44 Certification Rules & Regulations for Weed & Pest Supervisors  
[www.wyowed.org/docs/Supervisor\\_rules.pdf](http://www.wyowed.org/docs/Supervisor_rules.pdf)

### **11. Appeal process.**

*A person adversely affected by any notice, action or order of a weed control entity should have the right of appeal.*

MONTANA 7-22-2110. Administrative hearing -- appeals. (1)

<http://data.opi.state.mt.us/bills/mca/7/22/7-22-2110.htm>

### **12. State/Provincial & Local Advisory committee.**

*A state/provincial-wide noxious weed advisory committee or council can provide input from a cross section of interests to the state/province administering agency. This is important in improving program operations and obtaining credibility with the public.*

NEBRASKA 2-965.01 Advisory committee; membership.

[www.agr.state.ne.us/regulate/bpi/nwp/noxact.htm#296501](http://www.agr.state.ne.us/regulate/bpi/nwp/noxact.htm#296501)

COLORADO 35-5.5-107. Local advisory board - formation - duties.

[www.ag.state.co.us/DPI/weeds/statutes/weedlaw.PDF](http://www.ag.state.co.us/DPI/weeds/statutes/weedlaw.PDF)

### **13. Cooperation with federal and state agencies**

*Provisions for a cooperative framework between the local level and higher levels of government need to be a part of a complete noxious weed control effort.*

COLORADO 35-5.5-111. Cooperation with federal and state agencies.

<http://www.ag.state.co.us/dpi/weeds/statutes/weedlaw.PDF>

WASHINGTON RCW 17.10.145 State agencies' duty to control spread of noxious weeds. [www.nwcb.wa.gov/weed\\_laws/17-10.pdf](http://www.nwcb.wa.gov/weed_laws/17-10.pdf)

NORTH DAKOTA 63-01.1-13. Publicly owned land - Weed and pest control.

[www.state.nd.us/lr/cencode/T63C011.pdf](http://www.state.nd.us/lr/cencode/T63C011.pdf)

### **14. Control of noxious weeds on public lands**

It is difficult to have credibility and to get voluntary compliance of private landowners when noxious weeds are not controlled on public lands.

UTAH 4-17-10. *Jurisdiction of state and local agencies to control weeds*

NORTH DAKOTA 63-01.1-13. Publicly owned land - Weed and pest control.

[www.state.nd.us/lr/cencode/T63C011.pdf](http://www.state.nd.us/lr/cencode/T63C011.pdf)

WASHINGTON RCW 17.10.145 State agencies' duty to control spread of noxious weeds.

[http://www.wa.gov/agr/weedboard/weed\\_laws/17.10.html](http://www.wa.gov/agr/weedboard/weed_laws/17.10.html)

COLORADO 35-5.5-110. Public lands - control of undesirable plants -charges.

<http://www.ag.state.co.us/dpi/weeds/statutes/weedlaw.PDF>