

CHAPTER 38-22.

WEED AND PEST CONTROL

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CROSS-REFERENCES

Forest insect and disease control, Chapter 41-21.

Plant pest control, Chapter 38-24B.

§ 38-22-1. Superseded.

Commission Note.

This section, creating the Division of Weed Control within the Department of Agriculture, is superseded by § 29, ch 3, SL 1974 (Ex. Ord. 74-1), which abolished the division and transferred all its functions to the department. See §§ 1-41-4.1 and 38-1-5.1.

Collateral References.

3 Am Jur 2d, §§ 50, 51.

§ 38-22-1.1. Administration of commission under department supervision -Independent functions retained by commission.

The South Dakota Weed and Pest Control Commission shall be administered under the direction and supervision of the department and the secretary of agriculture. The commission retains the quasi-judicial, quasi-legislative, advisory, other nonadministrative and special budgetary functions (as defined in § 1-32-1) otherwise vested in it and may exercise those functions independently of the secretary.

Source: SL 1973, ch 2, § 193; 1983, ch 282, § 2.

§ 38-22-1.2. Definitions.

Terms used in this chapter, unless the context otherwise clearly requires, mean:

- (1) "Agricultural chemical," any material used to control or eradicate weeds or pests;
- (2) "Board," any county weed and pest board;
- (3) "Board member area," a geographical area within a county from which a member of the board is appointed;
- (4) "Commission," the South Dakota Weed and Pest Control Commission;
- (5) "Control," the prevention or limiting of the growth, spread or development of weeds or pests;
- (6) "Department," the State Department of Agriculture;
- (7) "Pest," any rodent, bird other than a game bird or a state or federally protected bird, insect or nematode which the commission has found to be detrimental to the production of crop or livestock or to the welfare of persons residing within the state;
- (8) "Pesticide," a substance or mixture of substances for preventing, destroying, repelling or mitigating any pest or any substance or mixture of substances intended for use as a plant regulatory, defoliant, or desiccant or any substance or mixture of substances intended to be used as a spray adjuvant.
- (9) "Secretary," the state secretary of the Department of Agriculture;
- (10) "Supervisor," any person appointed or employed by a board for the purpose of carrying out the provisions of this chapter;
- (11) "Weed," any plant which the commission has found to be detrimental to the production of crops or livestock or to the welfare of persons residing within the state;

Source: SL 1983, ch 282, § 1; 1989, ch 345, § 1.

Cross-References.

Application of statutory definitions, § 2-144

§ 38-22-1.3. State Weed and Pest Control Commission abolished.

The State Weed and Pest Control Commission established in this chapter is abolished.

Source: SL 1987, ch 393 (Ex. Ord. 87-4), § 19.

§ 38-22-1.4. South Dakota Weed and Pest Control Commission established.

There is established the South Dakota Weed and Pest Control Commission.

Source: SL 1987, ch 393 (Ex. Ord. 87-4), § 20.

§ 38-22-1.5. Composition of commission.

The South Dakota Weed and Pest Control Commission shall consist of the following members: the secretary of agriculture or his designee, the dean of the college of agriculture and biological sciences of South Dakota State University or his designee, the secretary of transportation or his designee, the secretary of game, fish and parks or his designee, the commissioner of school and public lands or his designee, a member of the State Association of County Commissions, the president of the South Dakota county association of weed and pest boards or his designee, and six members appointed by the Governor as provided in § 38-22-1.6.

Source: SL 1987, ch 393 (Ex. Ord. 87-4), § 21.

§ 38-22-1.6. Nomination of appointive members of commission - Areas represented - Terms for which appointed.

The six members of the South Dakota Weed and Pest Control Commission appointed by the Governor shall be selected from a list of nominees presented by the State Association of County Weed and Pest Boards, who shall submit at least three names for each appointment. One member shall reside within the counties of Brown, Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall or Roberts; one member shall reside within the counties of Bon Homme, Brookings, Clay, Hutchinson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Turner, Union or Yankton; one member shall reside within the counties of Bennett, Custer, Fall River, Haakon, Jackson, Jones, Lyman, Mellette, Pennington, Shannon or Todd; one member shall reside within the counties of Aurora, Brule, Buffalo, Charles Mix, Davison, Douglas, Gregory, Hanson, Jerauld, Sanborn or Tripp; one member shall reside within the counties of Beadle, Campbell, Edmunds, Faulk, Hand, Hughes, Hyde, McPherson, Potter, Spink, Stanley, Sully or Walworth; and one member shall reside within the counties of Butte, Corson, Dewey, Harding, Lawrence, Meade, Perkins or Ziebach. The term of each member appointed pursuant to this section shall be three years with the exception of the initial appointments which shall be made as follows: two members for a three-year term, two members for a two-year term and two members for a one-year term. The Governor shall designate the length of terms for the initial appointments as authorized in this section. As the term of any gubernatorial member expires, a new member shall be appointed from the district for a period of three years. In the event of a vacancy occurring in any of the terms, the Governor may appoint a successor in the manner described in this section to complete the term.

Source: SL 1987, ch 393 (Ex. Ord. 87-4), § 22.

§ 38-22-1.7. Functions of commission.

The South Dakota Weed and Pest Control Commission shall perform all of the functions and have all of the responsibilities of the former State Weed and Pest Control Commission established in this chapter.

Source: SL 1987, ch 393 (Ex. Ord. 87-4), § 23.

§§ 38-22-2, 38-22-3. Obsolete.

Commission Note.

These sections concerning the composition of the weed and pest control commission and appointment of its members became obsolete on the abolition of the commission and the creation of the South Dakota Weed and Pest Control Commission by §§ 19, 20, ch 393, SL 1987. See §§ 38-22-1.3, 38-22-1.5, 38-22-1.6.

§ 38-22-4. Per diem and expenses of commission members.

Repealed by SL 1988, ch 312, § 2.

§ 38-22-5. Meetings of commission - Election and terms of officers.

The South Dakota Weed and Pest Control Commission shall hold its meetings at such times as it may designate, but the annual meeting shall be held on such date as may be established by rules promulgated pursuant to chapter 1-26 at which meeting a president and vice-president shall be elected; however, the president may call special meetings. The president and vice-president shall be elected from among the members of the commission for a term of one year beginning with the meeting at which they are elected.

Source: SL 1945, ch 349, § 2; 1949, ch 437; SDC Supp 1960, § 62.0302; SL 1975, ch 252, § 3; 1983, ch 282, § 6; 1986, ch 326, § 52.

Cross-References.

Meetings of public agencies, Chapter 1-25.

§ 38-22-6. Appointment of state weed and pest coordinator.

The secretary of agriculture shall appoint a state weed and pest coordinator, who may not be a member of the South Dakota Weed and Pest Control Commission.

Source: SL 1945, ch 349, §§ 2, 3; 1949, ch 437; SDC Supp 1960, §§ 62.0302, 62.0303; SL 1975, ch 252, § 4; 1983, ch 282, § 7.

§ 38-22-7. Formulation of weed and pest program.

The South Dakota Weed and Pest Control Commission shall formulate a weed and pest program for the prevention, suppression, control and eradication of weeds and pests in South Dakota.

Source: SL 1945, ch 349, § 3; 1949, ch 437; SDC Supp 1960, § 62.0303; SL 1983, ch 282, § 8.

Collateral References.

Products liability, fertilizers, insecticides, pesticides, fungicides, weedkillers, and the like, or articles used in application thereof, 12 ALR 4th 462.

§ 38-22-8. Cooperation with other state agencies - Functions of experiment station and extension service.

The South Dakota Weed and Pest Control Commission and the Department of Agriculture shall at all times work in close cooperation with all state agencies, and particularly, they shall cooperate with the South Dakota State University agricultural experiment station in matters of research and their research shall be carried on by the experiment station; they shall cooperate with the South Dakota State University Agricultural Extension Service in matters of education and publicity and the extension service shall handle all matters of education and publicity.

Source: SL 1945, ch 349, § 5; SDC Supp 1960, § 62.0305; SL 1983, ch 282, § 9.

§ 38-22-9. Determination and publication of lists of state weeds and pests.

The South Dakota Weed and Pest Control Commission, pursuant to rules promulgated pursuant to the provisions of chapter 1-26, may determine which plants and animals shall be considered to be weeds and pests and shall from time to time prepare, and the Department of Agriculture shall publish, a list of state weeds and pests.

Source: SL 1945, ch 349, § 3; 1949, ch 437; SDC Supp 1960, § 62.0303; SL 1983, ch 282, § 10; 1986, ch 326, § 49.

§ 38-22-9.1. Eradication of marijuana and dangerous weeds.

Repealed by SL 1983, ch 282, § 11.

§ 38-22-10. Filing of commission rules, regulations and orders.

Repealed by SL 1983, ch 282, § 12.

§ 38-22-11. Enforcement of commission rules, regulations, processes, subpoenas and orders.

The rules, processes, subpoenas and orders of the South Dakota Weed and Pest Control Commission may be enforced by any court of competent jurisdiction.

Source: SL 1949, ch 437; SDC Supp 1960, § 62.0303; SL 1983, ch 282, § 13; 1986, ch 326, § 50.

Cross-References.

Judicial enforcement of administrative process, Chapter 21-34.

§ 38-22-11.1. Promulgation of rules.

The commission may promulgate rules pursuant to chapter 1-26:

- (1) To provide procedures for enforcement of weed and pest control;
- (2) To provide for records and reports;
- (3) To prescribe county weed and pest board activities;
- (4) To prescribe what constitutes a weed or pest;
- (5) To prescribe when an infestation constitutes a menace; and
- (6) To establish standards for application, economic feasibility, technical feasibility, reporting and evaluation of weed and pest control projects.

Source: SL 1986, ch 326, § 51; 1989, ch 345, § 8.

Cross-References.

Administrative rules of Department of Agriculture continued, § 1-26A-1.9.

§ 38-22-12. Administration of state weed and pest program.

The state weed and pest coordinator shall administer the state weed and pest program formulated by the South Dakota Weed and Pest Control Commission.

Source: SL 1945, ch 349, § 5; SDC Supp 1960, § 62.0305; SL 1983, ch 282, § 14.

Collateral References.

3Am Jur 2d, §§ 50, 51.

§ 38-22-13. Moving agricultural machinery without cleaning as misdemeanor.

It is a Class 2 misdemeanor for any person to move any harvesting or portable seed cleaning or agricultural processing equipment or vehicles on which the equipment is transported into this state or from any field within the state in which it has been used to another field without first cleaning such equipment and vehicles. For purposes of this section, equipment and vehicles are deemed to be clean if essentially free from dirt, seed, straw and chaff.

Source: SL 1955, ch 436; SDC Supp 1960, §§ 62.0309 (2), 62.9901; SL 1973, ch 256, §§ 1, 2; SDCL, § 38-22-15; SL 1977, ch 190, § 331; 1983, ch 282, § 15.

Cross-References.

Penalties for classified misdemeanors, § 22-6-2.

§ 38-22-14. Inspection and cleaning of used farm equipment imported into state - Certificate of clearance - Fee.

Repealed by SL 1973, ch 256, § 3.

§ 38-22-15. Moving agricultural equipment without cleaning as misdemeanor -Penalty.

Repealed by SL 1977, ch 190, § 332.

§ 38-22-16. Infested land declared public nuisance - Protective operations by secretary.

If any owner of weed or pest infested land fails to rid the land of such infestation and the secretary of agriculture finds that such infestation is a menace to neighboring lands or to the state or its people he may declare such infested land to constitute a public nuisance and may enter such infested areas and perform such protective operations as may be necessary.

Source: SL 1945, ch 349, § 8; 1949, ch 437; SDC Supp 1960, § 62.0308; SL 1970, ch 225, § 5; 1983, ch 282, § 16.

Cross-References.

Remedies against nuisances, Chapter 21-10.

Opinions of Attorney General.

A township board may not divert part of its road maintenance or snow removal funds for weed control on private lands which are not within any township road right-of-way if it would be in the best interests of the township, Opinion No. 90-05.

Enforcement of weed law on soil bank land under contract with federal government, Report 1959-60, p. 385

Federal government obligated to control noxious weeds on federally owned land, Report 1955-56, p. 395

Infested area that has been declared public nuisance remains under supervision of secretary of agriculture until nuisance is abated, Report 1955-56, p. 114.

Total cost of controlling weeds may be collected from owner of infested land, Report 1959-60, p. 257.

Collateral References.

Governmental liability for failure to reduce vegetation obscuring view at railroad crossing or at street or highway intersection, 22 ALR 4th 624.

Liability, in motor vehicle-related cases, of governmental entity for injury, death or property damage resulting from defect or destruction in shoulder of street or highway, 19 ALR 4th 532.

§ 38-22-16.1. Weeds or pests in any amount considered infestation.

The existence of weeds or pests in any amount or quantity upon land is sufficient to determine that such land is infested.

Source: SL 1970, ch 225, § 2; 1983, ch 282, § 17.

§ 38-22-16.2. Property owner who allows spread of infestation of noxious weeds or mountain pine beetle responsible for remedy.

If an infestation of noxious weeds or an infestation of mountain pine beetle spreads to adjacent private or public land, the person or entity owning the property from which the infestation spread is responsible for remedying the problems caused by the infestation, to the extent that the person or entity is responsible for allowing the infestation to spread to the adjacent private or public land.

§ 38-22-17. Notice to owner of infested land - Service - Contents.

No operations to rid lands of infestation may be undertaken pursuant to § 38-22-16 until notice of the declaration that such infested land constitutes a nuisance has been given to the owner. Notice shall be given by personal service upon the owner, if a resident of this state, a copy of the declaration filed in the office of the county auditor, in the manner that summons in civil actions are served, or by personal service upon the person in actual possession of the premises, together with a copy of the declaration provided for in § 38-22-16, that unless the owner complies with the orders of the secretary of agriculture within such time as the declaration states, which may be not less than three days nor more than fifteen days from the date of service, as specified in the notice, that protective operations shall be performed by the secretary and, if the owner does not pay the costs of such operations prior to the first day of November in the year in which the operations are performed, the cost shall become a lien against the lands of the owner.

Source: SL 1945, ch 349, § 8; 1949, ch 437; SDC Supp 1960, § 62.0308; SL 1983, ch 282, § 18.

Cross-References.

Service of process, § 15-6-4.

Opinions of Attorney General.

Declaring weed infested land a public nuisance and serving notice, procedure for, Report 1955-56, p. 92.

§ 38-22-17.1. Noncompliance with orders as misdemeanor.

It is a Class 2 misdemeanor for any owner, occupant or other person who maintains or exercises control or management over land to fail to comply with any order of the secretary of agriculture or the South Dakota Weed and Pest Control Commission to effectuate the purposes in this chapter.

Source: SL 1970, ch 225, § 3; 1977, ch 190, § 333; 1983, ch 282, § 19.

Cross-References.

Penalties for classified misdemeanors, § 22-6-2.

§ 38-22-17.2. Intervention on federal land by State Weed and Pest Control Commission.

If any agency of the United States fails or refuses to suppress weeds or pests on any land owned or controlled by such agency after receiving notice of such infestation by the county weed and pest board pursuant to this chapter, the South Dakota Weed and Pest Control Commission, at the request of the county board, shall intervene on its behalf. The attorney general shall provide such legal counsel as the South Dakota Weed and Pest Control Commission may require to resolve any such dispute.

Source: SL 1987, ch 290.

§ 38-22-18. Service of notice on nonresident owner of infested land.

If the owner of infested land is not a resident of South Dakota, service of notice may be made by posting such notice at the courthouse in the county in which the land is situated, and by mailing to the last known address of the owner. Service is deemed complete five days after the date of the posting and mailing of the notices, which shall be evidenced by the affidavit of a person qualified to serve civil process in this state to be filed with the county auditor. However personal service upon the owner outside of this state is sufficient.

Source: SL 1949, ch 437; SDC Supp 1960, § 62.0308; SL 1983, ch 282, § 20.

Cross-References.

Persons qualified to serve civil process, § 15-6-4(c).

§ 38-22-19. Police powers of state personnel in enforcement of chapter.

In the performance of their duties, pursuant to this chapter, the South Dakota Weed and Pest Control Commission, the secretary of agriculture, his assistants, inspectors, agents and employees are vested with police powers.

Source: SL 1949, ch 437; SDC Supp 1960, § 62.0308; SL 1983, ch 282, § 21.

§ 38-22-20. Entry by state personnel not deemed trespass - Crop damage not assessed.

The entrance by an agent or employee of the secretary of agriculture, county or supervisor, upon property, in performing his duties, pursuant to this chapter, does not constitute trespass, nor may damage be assessed against the state, the secretary, his agents or employees, the county, or any supervisor doing weed or pest control work.

Source: SL 1949, ch 437; SDC Supp 1960, § 62.0308; SL 1983, ch 282, § 22.

§ 38-22-21. Certification to county auditor of cost of protective operations on infested land - Collection as taxes.

Upon completion of protective operations, the secretary of agriculture shall certify to the county auditor the expenses for the performance of the protective operations, and the county auditor shall issue a warrant to the party entitled to payment of the costs of such protective operations from funds appropriated for that purpose. The owner of such infested land is indebted to the county for such expense actually incurred, and if not paid on or before the first day of November following such operations, such county auditor shall extend the amount of such indebtedness on the tax list against the infested land and all land owned by such owner contiguous thereto, in a

separate column headed "weed and pest control" and the amount shall be collected as other taxes are collected.

Source: SL 1890, ch 116, § 4; RPo1C 1903, § 3179; SL 1913, ch 282, § 4; 1917, ch 319, § 4; RC 1919, § 10408; SDC 1939, § 62.0304; SL 1945, ch 349, § 8; 1949, ch 437; SDC Supp 1960, § 62.0308; SL 1974, ch 256; 1983, ch 282, § 23.

Cross-References.

Collection of taxes, Chapter 10-21.

Tax lists, Chapter 10-17.

§ 38-22-22. Responsibility for cost of operations on publicly owned land.

The responsibility for and the cost of controlling and eradicating weeds and pests on all lands or highways owned or supervised by a state agency or subdivision shall be upon the state agency or subdivision supervising such lands or highways, and paid out of funds appropriated to its use.

Source: SL 1943, ch 312, § 6; 1945, ch 349, § 7; SDC Supp 1960, § 62.0307; SL 1983, ch 282, § 24.

Cross-References.

Highways, weed removal along, Chapter 31-31.

Municipal weed control power, § 9-30-5.

Opinions of Attorney General.

Township is responsible for control of noxious weeds, and adjoining landowner is responsible for removal of grass, non-noxious weeds and brush only, construing this section and §~ 38-22-24 and 31-31-2 together, Opinion No. 76-1.

Use of county highway funds for weed control, Report 1963-64, pp. 113,198, 354.

Collateral References.

3Am Jur 2d, §§ 50, 51.

Destruction of weeds and the like, tort liability of municipality or other governmental unit in connection with, 34 ALR 2d 1210.

Governmental liability for failure to reduce vegetation obscuring view at railroad crossing or at street or highway intersection, 22 ALR 4th 624.

Liability, in motor vehicle-related cases, of governmental entity for injury, death or property damage resulting from defect or destruction in shoulder of Street or highway, 19 ALR 4th 532.

§ 38-22-23. Associations, municipalities and subdivisions authorized to organize for weed control.

Repealed by SL 1983, ch 282, § 25.

§ 38-22-23.1. Meeting to appoint or provide for election of county weed and pest board - Notice.

The board of county commissioners of each county shall hold a public meeting to appoint or provide for the election of a county weed and pest board no later than February 1, 1984. Prior to the meeting the board of county commissioners shall establish the number of members of the board and shall establish board member areas. Each board member area shall be compact and contiguous. Notice of the meeting shall be advertised by publication in the official newspapers of the county, at least ten days before the meeting, and in any other manner as the board of county commissioners may provide.

Source: SL 1983, ch 282, § 26.

Cross-References.

Meetings of public agencies, Chapter 1-25.

§ 38-22-23.2. Members of county weed and pest board - Number - Terms -Qualifications.

The board of county commissioners shall appoint or provide for the election of a county weed and pest board which shall consist of five or seven members. However, one member shall be a county commissioner appointed by the board of county commissioners. Each member shall serve for a term of three years or until his successor is appointed and qualified. The board of county commissioners may stagger the initial appointments so that the terms of all of the board members do not expire at the same time. Any qualified elector, residing in the board member area he is appointed to represent, is eligible to be a member.

Source: SL 1983, ch 282, § 27.

§ 38-22-23.3. Time for selecting board.

Each board of county commissioners shall appoint or elect a county weed and pest board no later than March 1, 1984.

Source: SL 1983, ch 282, § 28.

§ 38-22-23.4. Subsequent appointment or election of weed board.

After the initial county weed and pest board has been appointed or elected, the board of county commissioners shall appoint or provide for the election of members to fill expired terms or vacancies. Each board member shall assume office at the first regular meeting of the board following appointment or election.

Source: SL 1983, ch 282, § 29; 1984, ch 266, § 1.

§ 38-22-23.5. Board member to be appointed or elected from first or second class municipality.

In any county containing a first or second class municipality with a population of five thousand or more, at least one county weed and pest board member shall be appointed or elected from within the limits of the municipality.

Source: SL 1983, ch 282, § 30; 1984, ch 266, § 2; 1992, ch 60, § 2.

Commission Note.

Section 2 of chapter 60 of the 1992 Session Laws changed the term “city” to “first class municipality” and “second class municipality” and changed the term “town” to “third class municipality” Section 2 also substituted “municipality” for “city or town” if the class of the municipality was not specified. The code commission has implemented this act in this section.

§ 38-22-23.6. Removal of board members.

The board of county commissioners may remove a member for repeated failure to attend meetings or for refusal or incapacity to act as a county weed and pest board member.

Source: SL 1983, ch 282, § 31.

§ 38-22-23.7. Initial officers of board - Election.

At its first annual meeting, the county weed and pest board shall elect a chairman, a vice-chairman, a secretary and a treasurer. The positions of secretary and treasurer may be consolidated at the discretion of the board and need not be members of the board.

Source: SL 1983, ch 282, § 32.

§ 38-22-23.8. Compensation and expense allowances of board members.

The board of county commissioners shall establish rates of compensation and expense and mileage allowances for the county weed and pest board members.

Source: SL 1983, ch 282, § 33.

§ 38-22-23.9. Powers of board.

The county weed and pest board may:

- (1) Employ administrative personnel and determine duties and conditions of employment;
- (2) Coordinate activities with state and federal agencies and enter into cooperative agreements, including agreements entered into pursuant to chapter 1-24;
- (3) Control and disburse money received from any source, including state and federal agencies;
- (4) Secure and maintain bonds or liability insurance.

Source: SL 1983, ch 282, § 34.

§ 38-22-23.10. Duties of board.

The county weed and pest board shall:

- (1) Implement and pursue an effective program for the control of weeds and pests;
- (2) Hold regular meetings;
- (3) Keep minutes of all meetings and a record of all official acts;
- (4) Submit a yearly report to the Department of Agriculture covering the activities of the board and submit reports to the board of county commissioners as the board may require;
- (5) Employ supervisors and, if necessary, deputies;
- (6) Make at least one annual inspection to determine the progress of weed and pest control within a county and make written reports covering the inspections available for public use; and
- (7) Obtain competitive bids for any purchase in accordance with the requirements established by law for other county purchases.

Source: SL 1983, ch 282, § 35; 1984, ch 266, § 3; 1991, ch 327.

§ 38-22-23.11. Purchase, sale and application of agricultural chemicals and poisons by board - Equipment - Labor.

The county weed and pest board may purchase such quantities of agricultural chemicals, poisons and equipment and hire such labor necessary to carry out the provisions of this chapter. The board may sell and apply agricultural chemicals and poisons for weed and pest control if such services, chemicals and poisons are not available through commercial sources.

Source: SL 1983, ch 282, § 36; 1984, ch 266, § 4; 1986, ch 333, § 2.

Opinions of Attorney General.

A township board may not divert part of its road maintenance or snow removal funds for weed control on private lands which are not within any township road right-of-way if it would be in the best interests of the township, Opinion No. 90-05.

§ 38-22-23.12. Investigation of suspected land - Notice required for entry.

If a county weed and pest board has probable cause to believe there is land upon which exist weeds or pests that may spread or contribute to the injury or detriment of others, it shall investigate the suspected premises. The designated representative of the board, after giving the landowner written notice, may go upon the premises without interference or obstruction for purposes of making a reasonable investigation of the infested area. Such a notice is considered given if it is given to the landowner or operator personally at least one day before entry or if it is mailed, by certified mail, addressed to the last known address of the landowner at least five days before entry. A board may serve notice of intent to inspect on all landowners by publishing a legal notice of such intent at least thirty days before entry in the county's official newspaper.

Source: SL 1983, ch 282, § 37; 1984, ch 266, § 5.

Cross References.

Legal newspapers and publication of notices, Chapter 17-2.

§ 38-22-23.13. Resolution of board confirming infestation and stating remedial requirements – Service on owner.

If the suspected area is found to contain weeds or pests, the county weed and pest board, by resolution adopted by a majority of its members, shall confirm such fact and set forth minimum remedial requirements for control of the area. The board shall mail, by certified mail, to the address of the landowner, a copy of the resolution, a statement of the approximate cost of fulfilling the requirements and a request that the requirements contained in the resolution be carried out at the owner's expense within a designated period of time.

Source: SL 1983, ch 282, § 38.

§ 38-22-23.14. Remedial action by board on owner's failure – Certification of expenses – Collection.

If the landowner fails or refuses to perform as required within the time designated, the county weed and pest board may proceed to perform the requirements. The board shall certify its expenses to the county auditor, and the auditor shall bill the landowner for the amount of the expenses. If the landowner has not paid the bill by November first of calendar year in which the expenses were incurred, the amount of the bill shall be increased by ten percent, and the adjusted amount shall be charged as taxes against each tract of land on which the expenses were incurred. The adjusted amount shall be collected as other taxes and credited to the general fund.

Source: SL 1983, ch 282, § 39; 1996, ch 247.

Collateral References.

Products liability, fertilizers, insecticides, pesticides, fungicides, weedkillers, and the like, or articles used in application thereof, 12 ALR 4th 462.

§ 38-22-23.15. Responsibility for control costs on state lands.

The costs of controlling weeds and pests on lands owned or supervised by the state shall be paid out of funds appropriated to the state agency that has responsibility for those lands.

Source: SL 1983, ch 282, § 40.

§ 38-22-24. Expenditure of county funds.

The board of county commissioners may, based upon the budget submitted by the county weed and pest board, appropriate and expend money from the general fund of the county for the purpose of this chapter.

Source: SL 1890, ch 116, § 3; RPo1C 1903, § 3178; SL 1913, ch 282, § 3; 1917, ch 319, § 3; RC 1919, § 10407; SDC 1939, § 62.0303; SL 1945, ch 349, § 6; 1947, ch

422; 1949, ch 437; 1951, ch 465; 1955, ch 437; SDC Supp 1960, § 62.0306; SL 1961, ch 10, § 6; 1972, ch 213; 1983, ch 282, § 41.

Cross-References.

County general levy purposes include expenditures pursuant to this section, § 10-12-9.

Opinions of Attorney General.

Membership dues to State Association of County Weed Boards may be paid by county commissioners, Report 1963-64, p. 43.

One governing body only can administer weed law in same area, Report 1947-48, p. 308.

Public corporation selling weed control chemicals and equipment not required to pay sales tax, Report 1947-48, p. 115.

Supplemental budget for weed control may be adopted by county, Report 1955-56, p. 326.

Township is responsible for control of noxious weeds, and adjoining landowner is responsible only for removal of grass, non-noxious weeds and brush, construing this section and §§ 38-22-22 and 31-31-2 together, Opinion No. 76-1.

Collateral References.

Governmental liability for failure to reduce vegetation obscuring view at railroad crossing or at street or highway intersection, 22 ALR 4th 624.

Liability, in motor vehicle-related cases, of governmental entity for injury, death or property damage resulting from defect or destruction in shoulder of street or highway, 19 ALR 4th 532.

§ 38-22-25. Tax levy for weed and pest control.

Repealed by SL 1985, ch 77, § 42, effective January 1, 1986.

§ 38-22-26. Organization for weed and pest control prerequisite to appropriation.

No appropriations may be made pursuant to § 38-22-24 until the county has been organized for weed and pest control pursuant to this chapter.

Source: SL 1945, ch 349, § 6; 1947, ch 422; 1949, ch 437; 1951, ch 465; 1955, ch 437; SDC Supp 1960, § 62.0306; SL 1961, ch 10, § 6; 1983, ch 282, § 43; 1985, ch 77, § 25.

§ 38-22-27. County weed board as public body - Per diem and expenses of board members.

Repealed by SL 1983, ch 282, § 44.

§ 38-22-28. Annual publication of notice as to enforcement of chapter.

Repealed by SL 1972, ch 43, § 5.

§ 38-22-29. Failure to perform duties as petty offense.

Repealed by SL 1983, ch 282, § 45.

§ 38-22-30. Prosecution of violations - Collection and disposition of forfeitures and fines.

The state's attorney shall, upon complaint, prosecute any person who violates any provision of this chapter and enforce the collection of forfeitures and fines. Such forfeitures or fines shall be deposited in the general fund of the county in which the prosecution is brought.

Source: SL 1890, ch 116, § 7; RPo1C 1903, § 3182; SL 1913, ch 282, § 6; RC 1919, § 10410; SDC 1939, § 62.0102; SL 1983, ch 282, § 46.

§ 38-22-31. Prosecutions under drug laws not precluded.

The penalties provided in this chapter are not intended, nor may they be used, to prevent prosecution for the violation of any of the provisions of chapter 34-20B or chapter 39-15.

Source: SL 1970, ch 225, § 4; 1983, ch 282, § 47.

§ 38-22-32. Department assisting boards - Agreements with federal agencies - Employment and purchases authorized.

The Department of Agriculture may assist, advise and coordinate the county weed and pest boards. The secretary of agriculture may enter into cooperative agreements with any state or federal agency to accomplish the purposes of this chapter, and he may employ such assistance and purchase such supplies and equipment as may be necessary.

Source: SL 1983, ch 282, § 48.

§ 38-22-33. Transportation of plant products containing weed seed as misdemeanor.

It is a Class 2 misdemeanor for any person to transport hay, livestock feeds or other plant products containing weed seed in such a manner as may constitute a substantial risk of contaminating fields or other lands.

Source: SL 1983, ch 282, § 49.

Cross-References.

Penalties for classified misdemeanors, § 22-6-2.

§ 38-22-34. Levy for weed and pest control programs in community -Administration by board.

With the approval of two-thirds of the landowners, a community may petition the county to assess a special levy to be used for weed and pest control programs in that community. For the purposes of this section, a community is any township, a natural or artificial geographic area, or a subdivision of a board member area as designated by the county weed and pest board and represented by a community representative. Any such program for the control of weeds and

pests which is funded by a special levy shall be administered through the county weed and pest board.

Source: SL 1986, ch 333, § 1.

§ 38-22-35. Weed and pest control fund.

Any funds collected pursuant to the weed and pest control surcharge established in § 38-20A-9 shall be distributed as follows: twenty-four dollars and fifty cents shall be deposited in the public lands weed and pest fund, and twenty-five dollars and fifty cents shall be deposited in the weed and pest control fund. All funds collected pursuant to §38-22-36 shall be deposited with the state treasurer in a special fund known as the “weed and pest control fund.”

Source: SL 1989, ch 345, § 2; 1993, ch 305, § 1A.

§ 38-22-36. Funds for weed and pest control fund.

The commission may accept gifts, grants, contracts or other funds designated for weed and pest management. Such funds shall be deposited in the weed and pest control fund and may be expended pursuant to § 38-22-38.

Source: SL 1989, ch 345, § 4.

§ 38-22-37. Expenditure of surcharge proceeds.

Repealed by SL 1991, ch 325, § 10.

§ 38-22-38. Expenditure of weed and pest control funds.

The commission may expend weed and pest control funds through grants or contracts to weed and pest control boards, governmental agencies or other entities it considers appropriate for weed and pest control projects for the following:

- (1) Employment of a new and innovative weed and pest control project or the development, implementation or demonstration of any weed and pest control project that may be proposed, implemented or established by local, state or national organizations, whether public or private. Such expenditures shall be on a cost-share basis with such organizations;
- (2) Weed and pest control cost-share programs with county weed and pest boards;
- (3) Special grants to county weed and pest control boards to eradicate or contain significant weeds or pests newly introduced into the county. These grants may be issued without matching funds from the board;
- (4) Assist county weed and pest boards in purchasing pesticides and application equipment and hiring labor necessary to protect against expansion of noxious weeds and declared pests;
- (5) Support multi-county weed and pest control and eradication efforts;
- (6) Promote landowner responsibility to control noxious weeds and pests in South Dakota;

(7) Support educational and research efforts to find new and better ways of controlling noxious weeds and pests.

A project is eligible to receive funds only if the county in which the project occurs has funded its own weed and pest program. The commission may also expend funds to pay for the costs of administering the weed and pest control fund not to exceed three percent of the allowable expenditure for each fiscal year and for administrative expenses incurred by the commission.

Source: SL 1989, ch 345, § 7; 1996, ch 246, § 2.