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## States' Noxious Weed Statutes and Regulations: *Texas*



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**States' Noxious Weed Statutes: Texas**

**Texas Agriculture Code**

**Title 5. Production, Processing, and Sale of Horticultural Products**

**Subtitle B. Horticultural Diseases and Pests**

**Chapter 78. Noxious Weed Control Districts**

**Subchapter A. General Provisions**

**Sec. 78.001. Definitions.** In this chapter:

- (1) "Board" means the board of directors of a district.
- (2) "District" means a noxious weed control district.

**Sec. 78.002. Legislative Determination.** The legislature has determined that:

- (1) noxious weeds are present in this state to a degree that poses a threat to agriculture and is deleterious to the proper use of soil and other natural resources; and
- (2) reclamation of land from noxious weeds is a public right and duty in the interest of conservation and development of the natural resources of the state.

**Sec. 78.003. Noxious Weed.** For the purposes of this chapter, a weed or plant is considered to be a noxious weed if declared to be a noxious weed by:

- (1) a law of this state; or
- (2) the department acting under the authority of Chapter 61 of this code or any other law of this state.

**Sec. 78.004. Eligibility to Sign Petition.** In order to sign a petition under this chapter, a person must:

- (1) hold title to land located in the district or proposed district;
- (2) be 18 years of age or older; and
- (3) reside in a county all or part of which is located in a district or proposed district.

**Sec. 78.005. Eligibility for Voting.** In order to vote in an election under this chapter, a person must:

- (1) be a qualified voter;
- (2) reside in the district or in the proposed district;
- (3) own taxable property within the district; and
- (4) have rendered the property to the county tax assessor for taxation as required by law.

### **Subchapter B. Creation of District**

**Sec. 78.011. Petition for Creation of District.** (a) Landowners may petition a commissioners court for the creation of a noxious weed control district authorized under Article XVI, Section 59, of the Texas Constitution.

(b) The petition must contain:

- (1) the signatures of 50 persons eligible to sign the petition or of a majority of the persons eligible to sign the petition, whichever is the lesser number;
- (2) the name of the proposed district; and
- (3) the boundaries of the proposed district.

(c) The petition may consist of more than one copy, and the signatures on each copy shall be added to determine if the total number of signatures required by this section have been obtained.

**Sec. 78.012. Filing Petition.** (a) The petition must be filed in the commissioners court of the county in which the largest part of the district is located.

(b) The person filing the petition shall deposit \$500 in cash with the county clerk of the county in which the petition is filed.

**Sec. 78.013. District Boundaries; Name.** (a) A district may include:

- (1) a political subdivision or a defined district of this state;
- (2) one or more counties, or a portion of one or more counties;
- (3) all or a portion of a town, village, or municipal corporation; or

- (4) a body of land separated from the rest of the district.
- (b) A district may not include:
  - (1) less than 32,000 acres;
  - (2) territory located in more than five counties;
  - (3) territory in more than one county, unless approved by the majority vote of eligible voters who reside in the territory in each county proposed to be included in the district; or
  - (4) land located in another district.
- (c) A district must bear a name containing the words "noxious weed control district."

**Sec. 78.014. Hearing Required.** After receiving a petition for the creation of a district, the commissioners court shall set a date for a hearing to determine if an election should be held to create a district. The hearing may be held at a regular or special session of the court.

**Sec. 78.015. Notice of Hearing.** (a) Except as provided by Subsection (b) of this section, the county clerk shall give notice of a hearing required by Section 78.014 of this code by publishing the notice two or more times, with an interval of seven or more days between the first and second publication, in a newspaper of general circulation in each county in which the proposed district will be located.

(b) If a county in which a proposed district will be located does not have a newspaper of general circulation, the county clerk shall give notice by posting the notice for two weeks or longer in four public places within the part of the county that is located in the proposed district.

- (c) Notice required by this section must contain a statement of:
- (1) the purpose of the hearing;
  - (2) the date, time, and place of the hearing; and
  - (3) the boundaries of the district, which may be defined by a general description that need not be a full legal description of the district.

**Sec. 78.016. Hearing.** At a hearing required by Section 78.014 of this code, a person whose land is included in or may be affected by the proposed district may appear before the commissioners court and testify for or against the creation of the district. If the

hearing lasts longer than one day, the commissioners court may adjourn the hearing to another day.

**Sec. 78.017. Action After Hearing.** At the conclusion of a hearing required under Section 78.014 of this code, the commissioners court may:

- (1) on a determination that the proposed district will provide a public benefit to a substantial portion of the land within the district, grant the petition;
- (2) on a determination that certain land in the district will not benefit from the creation of the district, redefine the proposed district to exclude that land and grant the petition; or
- (3) on a determination that the proposed district will not offer a public benefit or benefit to a substantial portion of the land included in the proposed district, refuse the petition.

**Sec. 78.018. Notice of Election; Election Orders.** (a) After granting a petition under Section 78.017 of this code, the commissioners court shall order an election to be held to determine whether a district should be created.

(b) If the proposed district is located entirely in one county, the county clerk shall post the notice at the county's courthouse door and at four public places within the proposed district. If the proposed district is located in more than one county, the county clerk shall post the notice at each county's courthouse door and at four public places within the proposed district in each county.

(c) The county clerk shall post the notice before the 30th day prior to the date of the election.

(d) The notice must contain a statement of:

- (1) the purpose of the election;
- (2) the time of the election;
- (3) the locations at which the election will be held; and
- (4) the boundaries of the proposed district.

**Sec. 78.019. Election.** (a) Except as otherwise provided by this section, the procedure for conducting an election must be in compliance with the election laws of this state.

(b) The commissioners court by order shall:

- (1) create voting precincts in the proposed district;
  - (2) select a polling place or polling places within the precincts, taking into consideration the convenience of the voters; and
  - (3) appoint judges and other necessary election officers.
- (c) Each eligible voter is entitled to vote at the election.
- (d) Ballots for the election must be printed to provide for voting for or against the proposition: "Creating the district and making a uniform assessment of benefits not to exceed six cents per acre."

**Sec. 78.020. Returns; Effect of Election.** (a) Immediately after the election, the election officers shall forward the results to the commissioners court. The commissioners court shall canvass the vote and enter an order declaring the result of the election.

(b) If the proposed district is located entirely in one county, the commissioners court shall issue an order declaring the creation of the district if the majority of votes cast in the county are for the proposition. If the proposed district is located in more than one county, the commissioners court shall issue an order declaring the creation of the district composed only of land in those counties in which a majority of votes are cast for the proposition.

(c) The commissioners court shall send a copy of the order to the county clerk of each county in which a portion of the district is located, and the county clerk shall file the order as a public record.

**Sec. 78.021. Expense of Creating District.** (a) After the district is created, the county clerk shall:

- (1) deduct from the fee deposited under Section 78.012 of this code an amount equal to expenses incurred by the commissioners court as a result of the creation of the district, including the expense of the election; and
  - (2) after receiving a voucher signed by the county judge, refund the remainder of the fee to the chairman of the board of the district within 30 days after the day of the election of the chairman.
- (b) The board shall refund to the petitioners out of the first money collected by the district the full amount of the fee required under Section 78.012 of this code.
- (c) If the commissioners court denies a petition or if the result of an election is against the creation of the district, the county clerk shall:

(1) deduct from the fee deposited under Section 78.012 of this code an amount equal to expenses incurred by the commissioners court as a result of consideration of the formation of the proposed district, including the expense of any election held; and

(2) after receiving a voucher signed by the county judge, refund the remainder of the fee to the petitioners or their agent or attorney.

### **Subchapter C. Administration**

**Sec. 78.031. Board of Directors.** (a) The board of directors of a noxious weed control district is composed of five persons, each of whom must:

(1) hold title to land located in the district;

(2) be 18 years of age or older; and

(3) reside in a county all or part of which is located in the district.

(b) Except as provided by Section 78.032 of this code, the term of office of a director is two years.

**Sec. 78.032. Initial Board of Directors.** (a) The commissioners court that ordered creation of the district shall appoint five eligible persons to serve as the first board of directors of the district.

(b) If the district is composed of land in more than one county, the commissioners court shall appoint one director from each county within the district and fill any remaining vacancy by appointing a director from the district at large.

(c) Three of the directors of the first board shall serve from the date of their appointment until the first annual meeting of eligible voters, as authorized by Section 78.033 of this code, and the remaining two directors shall serve from the date of their appointment until the second annual meeting of eligible voters. The directors shall determine by lot which three directors shall serve until the first annual meeting and which two directors of the board shall serve until the second annual meeting.

**Sec. 78.033. Annual Meeting.** (a) The chairman of the board shall call an annual meeting of the eligible voters in the district to be held on the fourth Saturday of each April.

(b) The chairman shall give written notice of the time and place of the meeting not later than the 10th day before the day of the meeting to each eligible voter in the district, as shown by the county tax assessor-collector's records in each county in the district.

(c) At the meeting, the eligible voters shall:

(1) elect successors to directors whose terms are expiring during the year of the meeting; and

(2) consider other business the board determines is proper to consider.

(d) A director elected under Subsection (c)(1) of this section must reside in the same territory from which the predecessor was required to be selected.

(e) A person entitled to attend the meeting may appoint a proxy to represent him or her at the meeting.

**Sec. 78.034. Compensation of Directors.** A director of the board is entitled to receive:

(1) \$5 a day for attending a meeting of the board, not to exceed \$60 a year; and

(2) 10 cents a mile for the distance the director actually travels between the director's residence and the place of a meeting of the board.

**Sec. 78.035. Officers.** The board shall annually elect a chairman and any officers it considers necessary. The board shall fill a vacancy in the chairmanship of the board or in an officer's position by appointing a director to fill the vacancy.

**Sec. 78.036. Inspectors and Clerical Employees.** (a) The board may employ one or more persons to perform inspections under Section 78.044 of this code.

(b) The board may set the compensation of an inspector, and an inspector is entitled to reimbursement for actual and necessary expenses incurred in making an inspection.

(c) The board may employ necessary clerical personnel.

### **Subchapter D. Enforcement**

**Sec. 78.041. General Enforcement Powers of Board.** The board may:

(1) determine which noxious weeds are subject to control and what appropriate methods of control are to be used, including spraying, cutting, burning, tilling, or any other appropriate method;

(2) prescribe specific areas in the district in which control measures are to be used;

(3) prescribe the period during which control measures are to be used; and

(4) incur expenses and take other actions necessary to carry out the purposes of this chapter.



**Sec. 78.042. Compliance Required.** (a) A person who holds title to or possesses land in the district shall comply with control measures prescribed by the board under this chapter.

(b) The commissioners court of a county located in the district shall comply with control measures prescribed by the board under this chapter for the purpose of controlling noxious weeds on rights-of-way of public roads and public land within the district.

**Sec. 78.043. Notice of Control Measures.** The chairman of the board shall give written notice to each person who holds title to or possesses land located in the district of:

- (1) the control measures in effect on the person's land; and
- (2) information necessary to enable the person to carry out the measures.

**Sec. 78.044. Inspection; Failure To Comply.** (a) A director or an inspector appointed by the board may enter land in the district to determine if:

- (1) control measures are necessary; or
- (2) control measures prescribed by the board are being carried out.

(b) If the board determines that a person who holds title to or possesses land that is located in the district is failing to comply with prescribed control measures, the board in writing shall order compliance with the measures within a stated time.

(c) If a person fails to obey an order issued under Subsection (b) of this section, the board may sue in the district court of the county in which the land is located for a mandatory injunction ordering compliance. If the court issues the injunction, the person is liable for court costs and a reasonable attorney's fee, to be determined by the court.

**Sec. 78.045. Equipment Cleaning Procedure.** (a) The board may prescribe rules requiring the cleaning of and the disposal of materials cleaned from farm implements and machinery brought into the district or moved from one part of the district to another part.

(b) The board shall give notice of rules prescribed under this section by:

- (1) posting a copy of the notice of the adoption of the rules at four public places in each county located in the district not later than the 11th day before the effective date of the rules; and

(2) filing a copy of the adoption of the rules with the county clerk of each county located in the district.

(c) A person commits an offense if the person fails to obey a rule prescribed under Subsection (a) of this section. An offense under this subsection is a Class C misdemeanor.

## **Subchapter E. Assessments and Appropriations**

**Sec. 78.051. Assessment.** (a) The board may impose an annual uniform assessment on land within the district in order to pay the expenses of the district.

(b) The amount of the assessment may not exceed six cents an acre.

**Sec. 78.052. Special Election on Increased Assessment.** (a) The commissioners court that ordered creation of an existing district with a maximum uniform assessment rate of less than six cents an acre may order an election to be held to determine whether or not the maximum uniform assessment rate should be raised to six cents an acre. The county clerk shall give notice in the manner provided by Section 78.018 of this code and the commissioners court shall conduct the election in the manner provided by Section 78.019 of this code.

(b) Ballots for the election must be printed to provide for voting for or against the proposition: "Increasing the maximum assessment rate to six cents."

(c) Immediately after the election, the election officers shall forward the results to the commissioners court. The commissioners court shall canvass the vote and declare the result of the election.

(d) If the district is located entirely in one county, the commissioners court shall issue an order declaring the increase of the maximum uniform assessment to six cents an acre. If the district is located in more than one county, the commissioners court shall issue an order declaring the increase of the maximum rate of assessment to six cents an acre only in those counties where a majority of votes cast are for the proposition.

**Sec. 78.053. Collection of Assessment.** (a) The board may assess and collect an assessment imposed under this chapter by:

(1) appointing an assessor-collector to perform the duties;

(2) contracting with the county tax assessor-collector to perform the duties; or

- (3) appointing an assessor to make an assessment and contracting with a county tax assessor-collector to collect the assessment.
- (b) If the board appoints an assessor-collector under Subsection (a)(1) of this section, the board may require the assessor-collector to give bond in an amount determined by the board. The board may compensate the assessor-collector in an amount not to exceed an amount equal to five percent of assessments collected.
- (c) If the board contracts with a county tax assessor-collector under Subsection (a)(2) of this section, the assessor-collector may retain as fees of office five percent of all assessments collected.
- (d) If the board appoints an assessor under Subsection (a)(3) of this section, the board may compensate the assessor in an amount not to exceed an amount equal to 2-1/2 percent of the assessments collected and the contracting county tax assessor-collector may retain 2-1/2 percent of the assessments collected.

**Sec. 78.054. Deposit of Assessment.** The person collecting assessments shall deposit the money collected into a district depository selected by the board.

**Sec. 78.055. Report to County Clerk.** (a) The chairman of the board shall file a report before September 1 of each year with the county clerk of each county in which the district is located.

(b) The report must contain:

- (1) a statement of the total amount of money received by the board during the 12 months ending the last June 30;
- (2) an itemized statement of the total amount of money expended by the board during the 12 months ending the last June 30; and
- (3) a statement of the amount of money on hand on the last June 30.

**Sec. 78.056. Report to Department.** (a) Before September 1 of each year, the chairman of the board shall file a report with the department stating the amount of money received through the assessments by the district in the 12 months ending the last June 30.

(b) The department shall certify the amount stated in the report required by Subsection (a) of this section to the comptroller of public accounts.

**Sec. 78.057. APPROPRIATED FUNDS.** (a) Except as provided by Subsection (b) of this section, if the legislature appropriates funds for the control of noxious weeds, the comptroller shall issue a warrant to each district in an amount equal to the amount certified for the district by the department under Section 78.056 of this code.

(b) If the legislature appropriates an amount for the control of noxious weeds that is less than the total of all amounts certified by the department under Section 78.056 of this code, the comptroller shall issue a warrant to each district in an amount that is equal to that district's proportion of the total of funds certified under Section 78.056 of this code.

### **Subchapter F. Dissolution of District**

**Sec. 78.061. Petition for Dissolution.** (A) The eligible voters residing in a district may petition the board to conduct an election on the dissolution of the district.

(b) The petition must contain the signatures of 50 eligible voters or of a majority of the eligible voters in the district, whichever is the lesser number.

**Sec. 78.062. Election Order.** (a) Before the 90th day after the day on which the board receives a petition for dissolution, the board shall order an election to determine whether the district should be dissolved.

(b) The chairman shall give notice of the election in the same manner as is required for publication of notice of a hearing under Section 78.015 of this code.

(c) Notice required by this section must contain a statement of:

- (1) the purpose of the election; and
- (2) the date, time, and place of the election.

**Sec. 78.063. Dissolution Election.** (a) Except as otherwise provided by this section, the procedure for conducting a dissolution election shall be in compliance with the election laws of this state.

(b) The board shall:

- (1) designate polling places in the district, taking into consideration the convenience of the voters; and
- (2) appoint judges and the other necessary election officers.

(c) Each eligible voter is entitled to vote at the election.

**Sec. 78.064. Returns; Effect Of Election.** (a) After the election, the board shall:

(1) canvass the returns of the election; and

(2) enter an order declaring the result of the election.

(b) If a majority of votes are cast against the dissolution of the district, another election on the proposition may not be held within 12 months after the date of the election.

(c) If a majority of votes are cast for the dissolution of the district, the board shall enter an order declaring the district dissolved.

**Sec. 78.065. Dissolution.** (a) After a dissolution order has been issued, the board may not exercise any power except to terminate the affairs of the district.

(b) If at the time of dissolution the district does not have sufficient funds to pay claims against the district and if annual assessments already imposed are insufficient to pay the claims, the board may impose and collect further annual assessments in an amount necessary to pay the claims.

(c) If at the time of dissolution there are no claims against the district, the board shall pay any remaining funds to the treasuries of the counties located in the district. Each county shall deposit the funds received to the credit of the general fund of the county. The amount of the payment to each county must be in the same proportion as the area of the county is to the total area of the district.

### **Subchapter G. Annual Review to Exclude Land in Crosby County**

**Sec. 78.071. Annual Review.** (a) The Commissioners Court of Crosby County shall establish a regular time once every calendar year to review petitions for excluding land from the district.

(b) The Commissioners Court of Crosby County shall publish notice of the hearing once a week for two consecutive weeks in one or more newspapers with general circulation in the district. The first publication shall appear at least 15 days and not more than 40 days before the date of the hearing.

(c) The notice shall advise all persons eligible to sign a petition under this chapter of their right to present petitions for exclusions and offer evidence in support of the petition

and their right to contest any proposed exclusions based on either a petition or the court's own conclusions.

(d) A person eligible to sign a petition under this chapter within the district may file a petition with the commissioners court requesting that land be excluded from the district. A petition for exclusion shall be filed with the court at least 10 days before the date of the hearing and shall state clearly the reasons why the land will not benefit from inclusion in the district.

(e) After considering all evidence presented to it, if the commissioners court finds that the land described in a petition for exclusion does not benefit from inclusion in the district, the court shall declare the land excluded and shall redefine the boundaries of the district accordingly.

(f) The owner of the excluded land is not exempt from liability for any amounts due to the district prior to exclusion of the land.

(g) Land excluded from the district under this section may be included in the district at a later time after petition, notice, and hearing as provided in this section for exclusion of land from the district.