

## CHAPTER 18

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**18.01** [Repealed, 1959 c 35 s 19]

#### 18.011 DEFINITION.

Subdivision 1. **Scope.** Except where the context otherwise indicates, for the purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of the department of agriculture.

**History:** 1961 c 113 s 1; 1961 c 128 s 3

### LOCAL PEST CONTROL

#### 18.012 POLICY.

The purpose of this local pest control act is to authorize subdivisions of state government to establish and fund their own programs to control pests that may be detrimental to the health and welfare of humans or animals and to the environment. To assure that these local

programs are conducted in a safe and proper manner, these programs must be formulated and conducted in accordance with the directions and recommendations prescribed by the commissioner.

**History:** 1975 c 180 s 1; 1986 c 444

**18.02** [Repealed, 1959 c 35 s 19]

**18.021 DEFINITIONS.**

Subdivision 1. **Terms.** Unless the language or context clearly indicates that a different meaning is intended, the following terms shall, for the purposes of section 18.022, be given the meanings subjoined to them.

Subd. 2. **Insect pest.** "Insect pest" includes grasshoppers, cutworms, army worms, European corn borers, Japanese beetles, European elm bark beetles, native elm bark beetles, forest tent caterpillars, bee diseases, and any other insects which the commissioner may designate as dangerous to crops or the welfare of the people.

Subd. 3. **Destructive or nuisance animals.** "Destructive or nuisance animals" includes such animals as rats, gophers, mice, and other unprotected wild animals as defined in section 97B.655, which the commissioner may designate as dangerous to the welfare of the people.

Subd. 4. **Diseases.** The term "diseases" refers to such dangerous plant diseases and bee diseases as the commissioner may designate as dangerous to agriculture, horticulture, and forestry.

**History:** (6145-24,6145-25,6145-26) 1935 c 29 s 9-11; 1953 c 641 s 2; 1957 c 552 s 14; 1965 c 768 s 1; 1967 c 799 s 1; 1986 c 386 art 4 s 4

**18.022 INSECT PESTS, PLANT DISEASES, BEE DISEASES, AND DESTRUCTIVE OR NUISANCE ANIMALS.**

Subdivision 1. **Control.** When recommended so to do by the commissioner of agriculture, the governing body of any county, city, or town of this state is hereby authorized and empowered to appropriate money for the control of insect pests, plant diseases, bee diseases, or destructive or nuisance animals. Such money shall be expended according to technical and expert opinions and plans as shall be designated by the commissioner and the work shall be carried on under the direction of the commissioner.

Subd. 2. **Cost.** The governing body of the political subdivision may levy a tax on the taxable property within the subdivision to defray the cost of the activities authorized under subdivision 1.

Subd. 3. **Certificates of indebtedness.** To provide funds for such activities in advance of collection of the tax levies under subdivision 2, the governing body may, at any time after the tax has been levied and certified to the county auditor for collection, issue certificates of indebtedness in anticipation of the collection and payment of such tax. The total amount of such certificates, including principal and interest, shall not exceed 90 percent of the amount of such levy and shall be payable from the proceeds of such levy and not later than two years from the date of issuance. They shall be issued on such terms and conditions as the governing body may determine and shall be sold as provided in section 475.60. If the governing body determines that an emergency exists, it may make appropriations from the proceeds of such certificates for authorized purposes without complying with statutory or charter provisions requiring that expenditures be based on a prior budget authorization or other budgeting requirement.

Subd. 4. **Deposit of proceeds in separate fund.** The proceeds of any tax levied under subdivision 2 or of any issue of certificates of indebtedness under subdivision 3 shall be deposited in the municipal treasury in a separate fund and expended only for purposes authorized by this section. If no disbursement is made from the fund for a period of five years, any money remaining therein may be transferred to the general fund.

Subd. 5. **Penalty.** Any person who shall prevent, obstruct, or in any manner interfere with the county authorities or their agents in carrying out the provisions of subdivisions 1 to 4, or neglects to comply with the rules and regulations of the county commissioners promulgated under authority thereof, shall be guilty of a misdemeanor.

**Subd. 6. Regulations, scope.** The council of any city by ordinance and the board of county commissioners of any county and the town board of any town by resolution may adopt and enforce regulations to control and prevent the spread of plant pests and diseases. Such regulations may authorize appropriate officers and employees to enter and inspect any public or private place which might harbor plant pests, as defined in section 18.46, subdivision 13, may provide for the summary removal of diseased trees from public or private places where deemed necessary to prevent the spread of the disease, may require the owner to destroy or treat plant pests, diseased plants or other disease bearing material and in default thereof to provide for such work at the expense of the owner, which expense shall be a lien upon the property and may be collected as a special assessment as provided by section 429.101 or by charter. In this subdivision, the term private place means every place except a private home.

**Subd. 7. Failure of political subdivision to act; commissioner's duties.** If the governing body of a political subdivision does not appropriate money for the control of Dutch elm disease pursuant to subdivision 1, or does not adopt and enforce regulations to control and prevent the spread of Dutch elm disease pursuant to subdivision 6, and if the commissioner determines that economic, recreational, or esthetic losses will result, the commissioner shall proceed as provided in section 18.48, subdivisions 1 and 4, to control the spread of Dutch elm disease. However, the expense of these control activities performed on land owned by a county, city, or town is a charge upon the county, city, or town owning the land and shall be paid by the governing body from money which it shall appropriate pursuant to subdivision 1 and, if necessary, for which it shall levy taxes pursuant to subdivision 2. The purpose of this subdivision and of the increased maximum tax levies authorized by subdivision 2, clause (b), is to protect elm trees from Dutch elm disease and thus prevent the economic, recreational, and esthetic losses which occur when elm trees are killed by Dutch elm disease.

**Subd. 8. Rules.** The commissioner may make reasonable rules after a public hearing, in a manner provided by law, to properly carry out the purposes of this section and section 18.012.

**Subd. 9. Rules.** The commissioner may adopt rules in accordance with sections 14.02, 14.04 to 14.28, 14.38, 14.44 to 14.45, and 14.57 to 14.62 prescribing control measures to be used to prevent the spread of shade tree diseases and shall include the following: (a) A definition of shade tree, (b) qualifications for inspectors, (c) methods of identifying diseased shade trees, (d) procedures for giving reasonable notice of inspection of private real property, (e) measures for the treatment and removal of any shade tree which may contribute to the spread of shade tree disease, and (f) such other matters as shall be determined to be necessary by the commissioner to prevent the spread of shade tree disease and enforce the provisions of this section. The rules of the commissioner shall apply in a county, city or town unless the county, city or town adopts an ordinance or resolution pursuant to subdivision 6 which is determined by the commissioner to be more stringent than the rules of the commissioner. The rules of the commissioner or the more stringent ordinance or resolution of the city, county or town shall apply to all state agencies and special purpose districts which own or control land within any county, city or town exercising the powers granted in this section.

**History:** (6145–16,6145–23) 1935 c 29 s 1,8; 1953 c 641 s 1; 1957 c 552 s 12; 1961 c 113 s 1; 1965 c 323 s 1; 1965 c 768 s 2; 1967 c 799 s 2,3; 1973 c 123 art 5 s 7; 1973 c 583 s 3; 1973 c 773 s 1; 1975 c 180 s 2; 1975 c 253 s 6; 1982 c 424 s 130; 1985 c 248 s 70; 1989 c 350 art 10 s 1; 1Sp1989 c 1 art 2 s 11; 1990 c 426 art 1 s 10; 1991 c 291 art 12 s 1; 1994 c 505 art 2 s 1; 1995 c 233 art 2 s 56

## 18.0223 GRASSHOPPER CONTROL ZONES.

The commissioner of agriculture shall designate townships of counties that have had grasshopper surveys showing economic damage or potential economic damage as a grasshopper control zone where control programs under sections 18.0223 to 18.0229, will be undertaken.

**History:** 1989 c 350 art 10 s 2; 1991 c 199 art 2 s 1

**18.0225 GRASSHOPPER CONTROL PROGRAM.**

(a) The commissioner of agriculture shall develop and implement a grasshopper control program to prevent crop damage in the grasshopper control zone. Within grasshopper control zones the commissioner, counties, local weed inspectors, and landowners have the same authorities and duties under chapter 18 for grasshoppers as if grasshoppers are noxious weeds under chapter 18. After consultation and cooperation with the Minnesota extension service entomologist, the commissioner must develop the program to economically and efficiently control grasshoppers and to minimize adverse environmental impact, including the selection of pesticides and prescription of application rates.

(b) Notwithstanding the provisions of this chapter, the board of a town designated by the commissioner as a grasshopper control zone may appoint a grasshopper control advisory committee of members who are residents of the township. The advisory committee must include:

(1) at least one owner of land enrolled in the conservation reserve program if any land is enrolled and an owner of enrolled land is willing to serve; and

(2) at least one dairy farmer if dairying occurs in the township and a dairy farmer is willing to serve.

If the town board appoints a grasshopper control advisory committee, the board must seek the advice of the advisory committee before the issuance of each order for grasshopper control or the advisory committee may adopt guidelines for issuing grasshopper control orders.

(c) The grasshopper control program must utilize proven methods of grasshopper control and the commissioner may make grants for experimental methods of control in selected areas.

(d) Before any grasshopper control measures, including, but not limited to, spraying or the deposit of pelletized controls, are applied on or to streams, lakes, waterways, or public waters, the commissioner shall seek the review and approval of the commissioner of natural resources. As used in this paragraph, "streams, lakes, waterways, or public waters," does not include farm ditches, drainage ditches, or county ditches.

(e) The commissioner, upon written request from any person or organization, may exempt from grasshopper control measures a parcel of land that the commissioner, in consultation with the commissioner of natural resources, determines to be of particular, unique scientific or natural significance or is particularly sensitive to the use of insecticides or other control methods being used. The commissioner must consider previous pesticide applications to the property to be exempted and agricultural practices conducted on the property. The exemption may be conditional, may apply to all or part of the property requested, and may be revoked by the commissioner at any time. An exemption granted under this paragraph is for mandatory grasshopper control and does not affect liability under other law.

(f) The request for exemption must include at least the following:

(1) the name and address of the person or organization making the request;

(2) the acreage and legal description of the parcel;

(3) a statement of the specific reasons why an exemption is requested; and

(4) any agreements for grasshopper control and any other information required by the commissioner.

(g) Upon notice of the approval of an exemption, the owner of the exempted property must mail the following notice to adjoining landowners:

"(Name of exempt landowner) has requested and the commissioner of agriculture has exempted (description of land exempted) from mandatory grasshopper control measures due to the scientific or natural significance or sensitivity to insecticides of the property. It is the intent of (landowner's name) not to control grasshoppers on the property. If you have questions about how you may make an agreement for grasshopper control you may contact (exempt landowner's name, address, and phone number).

Cost-sharing may be available for treatment of grasshoppers on your property. For more information contact the commissioner of agriculture.

The exemption does not affect liability under other law."

(h) A decision of the commissioner under paragraph (e) must be in writing and delivered to the person or organization making the request and the clerk of the town in which the property is located. The commissioner, counties, towns, and their agents are not liable for damages from exemptions granted under this section.

(i) From funds appropriated for this purpose, the commissioner must reimburse a person for the cost of grasshopper control measures in a 20-rod wide buffer area on property adjacent to property exempted from grasshopper control measures under paragraph (e), to the extent funds are available. Reimbursement to a person must be made only upon receipt of a completed application form indicating the need for treatment based on an inspector's determination that the exempted property has grasshoppers in densities greater than the density determined by the commissioner to cause economic or potential economic damage for all affected lands and identifying the location of the treatment. For each application, reimbursement must be 50 percent of cost not to exceed \$4 reimbursement per acre for aerial spraying and \$2.50 reimbursement per acre for ground spraying.

**History:** 1989 c 350 art 10 s 3; 1990 c 607 s 1

**18.0226** [Repealed, 1990 c 607 s 8]

### **18.0227 EXPERIMENTAL GRASSHOPPER CONTROL.**

Subdivision 1. **Authorization.** The commissioner of agriculture may designate certain areas or types of controls for an experimental control program for methods that are not commonly used in the state or have not been proven to be effective.

Subd. 2. **Eligible participants.** Public and private entities willing to participate in the experimental grasshopper control program may not be required to pay more than 20 percent of the cost of the experimental control methods on property they are responsible for controlling.

Subd. 3. **Administration.** The commissioner shall develop the experimental grasshopper control program and may adopt rules, guidelines, and procedures notwithstanding chapter 14 to implement the program, except the commissioner must comply with section 14.38, subdivisions 7 and 8.

**History:** 1989 c 350 art 10 s 5

### **18.0228 CONTROL PROVISIONS.**

Subdivision 1. **Pesticide selection.** (a) The commissioner, in consultation with the Minnesota extension service entomologist, shall prepare a list of registered pesticides and their federal label requirements for use in the grasshopper control program. The commissioner shall recommend pesticides and application methods in designated grasshopper control zones that will minimize the adverse impact on foraging bees. The pesticides must economically and efficiently control grasshoppers and minimize adverse environmental impacts. Grasshopper control may only be conducted under this chapter with pesticides used according to their label requirements.

(b) The commissioner shall prescribe methods to determine grasshopper densities and densities causing economic or potential economic damage.

Subd. 2. **Individual notices.** (a) The individual notices required under this chapter for the grasshopper control program must be in a form prescribed by the commissioner and state at least the following:

- (1) the legal description of the property covered by the notice to control;
  - (2) the date the notice is issued;
  - (3) the name and work telephone number of the inspector issuing the notice;
  - (4) the grasshopper counts found on the property;
  - (5) the approximate date the grasshoppers on the property will be controlled by the county or municipality if the owner or occupant does not comply with the notice, which must be at least three days after the date the notice was served;
  - (6) that the costs of the control will be a lien and applied against the property's tax roll;
- and

(7) that the owner or occupant may contact the inspector about the notice before the time that the county or the municipality will control grasshoppers, which must be at least three days after the date the notice was served.

(b) The commissioner, a county agricultural inspector, or a local weed inspector issuing a notice under this subdivision shall provide the same number of days for compliance under paragraph (a), clause (5), for property controlled by a private land owner or occupant as for property controlled by a unit of state or local government.

**Subd. 3. Effects on foraging bees.** (a) The Minnesota extension service shall hold meetings in grasshopper control zone areas explaining grasshopper control methods and procedures to minimize adverse effects on foraging bees.

(b) Not later than May 1 of each year, an owner of honeybee colonies must notify the commissioner as to the number and location of the colonies. Notification under this section must be accomplished by identifying on a map provided by the commissioner the location of colonies. The notice must include the name, address, and telephone number of the owner. If an owner of honeybee colonies relocates the colonies the owner must report the relocation orally, by phone, or in writing to the extension agent, the town clerk, and the commissioner within ten days after the relocation.

(c) The commissioner shall prepare maps of the location of all registered honeybee colonies, including identification of the name, address, and telephone number of the owner. The maps must be updated at least once each 14 days if owners of registered honeybee colonies give notice of relocations.

(d) The commissioner shall provide a list of licensed commercial and noncommercial pesticide applicators, including the applicator's name, business address, and phone number, to the registered beekeepers in designated grasshopper control zones.

(e) The commissioner shall prescribe a system by which owners of honeybee colonies, licensed commercial and noncommercial pesticide applicators, and county extension agents must, and town clerks may, be advised of the location of registered honeybee colonies reported under this section, of the federal pesticide label requirements pertaining to foraging bees, and of penalties for violating label requirements.

(f) The commissioner shall also develop guidelines for a voluntary system to facilitate the exchange of information between owners of registered honeybee colonies and pesticide applicators regarding the pesticide selected for use, the anticipated date and time of application, and the location of honeybee colonies.

(g) In a year in which grasshopper control zones are designated, the commissioner shall report to the chairs of the house and senate agriculture and environment committees on the number of acres treated for grasshopper control, the pesticides recommended for use, the pesticides used, the results of research and application of nonpesticide grasshopper control, the number of acres exempted from grasshopper control, and any evidence of negative environmental impacts of the grasshopper control program.

**History:** 1990 c 607 s 2

### **18.0229 LIABILITY; APPEALS.**

**Subdivision 1. Counties and townships.** Counties and townships and their agents are not liable for damages from the grasshopper control program for actions conducted in accordance with sections 18.0223 to 18.0229.

**Subd. 2. Access for inspection.** An inspector may enter any land to inspect grasshopper densities.

**Subd. 3. Appeal to county board.** A person who is ordered to control grasshoppers under sections 18.0225 to 18.0229 and is charged for grasshopper control may appeal the cost of grasshopper control to the county board of the county where the grasshopper control measures were undertaken within 30 days after being charged. The county board shall determine the amount and approve the charge and filing of a lien against the property if it determines that:

(1) the owner, or occupant if other than the owner, responsible for controlling grasshoppers did not comply with the order of the inspector; and

(2) the grasshopper densities on the property exceeded the densities determined by the commissioner to cause economic or potential economic damage.

**Subd. 4. Court appeal of costs; petition.** (a) A land owner who has appealed the cost of grasshopper control measures under subdivision 3 may petition for judicial review. The petition must be filed within 30 days after the conclusion of the hearing before the county board. The petition must be filed with the court administrator in the county in which the real property where the grasshopper control measures were undertaken is located, together with proof of service of a copy of the petition on the commissioner and the county auditor. The petition must be accompanied by the standard filing fee for civil actions. No responsive pleadings may be required of the commissioner or the county, and no court fees may be charged for the appearance of the commissioner or the county in the matter.

(b) The petition must be captioned in the name of the person making the petition as petitioner and the commissioner of agriculture and the respective county as respondents. The petition must include the petitioner's name, the legal description of the real estate involved, a copy of the notice to control grasshoppers, and the date or dates on which appealed control measures were undertaken.

(c) The petition must state with specificity the grounds upon which the petitioner seeks to avoid the imposition of a lien for the cost of grasshopper control measures.

**Subd. 5. Hearing.** (a) A hearing under subdivisions 4 to 6 must be held at the earliest practicable date, and in no event later than 90 days following the filing of the petition of objection. The hearing must be before a district judge in the county in which the real property where the grasshopper control measures were undertaken is located, and must be conducted in accordance with the district court rules of civil procedure.

(b) The court shall either order that a lien representing part or all of the costs for grasshopper control measures be imposed against the real property or that the land owner be relieved of responsibility for payment of grasshopper control measures undertaken.

**Subd. 6. Further appeal.** A party aggrieved by the decision of the reviewing court may appeal the decision as provided in the rules of appellate procedure.

**History:** 1990 c 607 s 3

### 18.023 SHADE TREE DISEASE CONTROL.

**Subdivision 1. Definitions.** As used in subdivisions 1 to 12 the terms defined in this subdivision shall have the meanings given them.

(a) "Metropolitan area" means the area comprising the counties of Hennepin, Ramsey, Anoka, Dakota, Washington, Scott and Carver.

(b) "Commissioner" means the commissioner of agriculture.

(c) "Municipality" means any home rule charter or statutory city or any town exercising municipal powers pursuant to section 368.01, or any general or special law, located in the metropolitan area; or any special park district as organized under chapter 398; or any special purpose park and recreation board organized under the city charter of a city of the first class located in the metropolitan area; or any county in the metropolitan area for the purposes of county owned property or any portion of a county located outside the geographic boundaries of a city or town exercising municipal powers; and any municipality or county located outside the metropolitan area with an approved disease control program.

(d) "Shade tree disease" means Dutch elm disease, oak wilt, or any disorder affecting the growth and life of shade trees.

(e) "Wood utilization or disposal system" means facilities, equipment or systems used for the removal and disposal of diseased shade trees which includes the collection, transportation, processing or storage of wood and which aids in the recovery of materials or energy from wood.

(f) "Approved disease control program" means the municipal plan as approved by the commissioner to control shade tree disease.

(g) "Disease control area" means an area approved by the commissioner within which a municipality will conduct an approved disease control program.

(h) "Sanitation" means the identification, inspection, disruption of a common root system, girdling, trimming, removal, and disposal of dead or diseased wood of shade trees, in-

cluding subsidies for trees removed pursuant to subdivision 4, on public or private property within a disease control area.

(i) "Reforestation" means the replacement of shade trees removed from public property and the planting of any species of tree as part of a municipal disease control program. For purposes of this clause, "public property" shall include private property within five feet of the boulevard or street terrace in any city which has enacted an ordinance on or before January 1, 1977, that prohibits or requires a permit for the planting of trees in the public right-of-way.

Subd. 1a. [Repealed, 1987 c 396 art 11 s 21]

Subd. 2. **Commissioner to adopt rules.** The commissioner shall adopt and may amend rules relating to shade tree disease control in any municipality, as defined in subdivision 1. The rules shall prescribe control measures to be used to prevent the spread of shade tree diseases and shall include the following: (a) A definition of shade tree, (b) qualifications for tree inspectors, (c) methods of identifying diseased shade trees, (d) procedures for giving reasonable notice of inspection of private real property, (e) measures for the removal of any shade tree which may contribute to the spread of shade tree disease, and for reforestation of disease control areas, (f) approved methods of treatment of shade trees, (g) criteria for priority designation areas in an approved disease control program, and (h) any other matters determined necessary by the commissioner to prevent the spread of shade tree disease and enforce the provisions of this section. After reasonable notice of inspection an owner of the real property on which a diseased shade tree is located shall remove or treat the tree within the period of time and in the manner established by the commissioner. Diseased shade trees which are not removed or treated in compliance with the commissioner's rules shall be declared a public nuisance and removed or treated by approved methods by the municipality which may assess the total expense, which shall be limited to the lowest contract rates available, provided said rates include wage levels which meet Minnesota minimum wage standards, or any part thereof to the property and the expense shall become a lien on the property. A municipality may assess not more than 50 percent of the expense of treating with an approved method or removing diseased shade trees located on street terraces or boulevards to the abutting properties and the assessment shall become a lien on the property.

Subd. 3. **Rules; applicability to municipalities.** The rules of the commissioner shall apply in a municipality unless the municipality adopts an ordinance which is determined by the commissioner to be more stringent than the rules of the commissioner. The rules of the commissioner or the more stringent ordinance of the municipality shall be in effect 60 days from March 31, 1974. The rules of the commissioner or the municipality shall apply to all state agencies, special purpose districts and metropolitan commissions as defined in section 473.121, subdivision 7, which own or control land adjacent to or within a shade tree disease control area in Laws 1975, chapter 253.

Subd. 3a. **Grants to municipalities.** (a) The commissioner may, in the name of the state and within the limit of appropriations provided, make grants-in-aid to a municipality with an approved disease control program for the partial funding of municipal sanitation and reforestation programs. The commissioner may make grants-in-aid to any home rule charter or statutory city, or any special purpose park and recreation board organized under a charter of a city of the first class or any nonprofit corporation serving a city of the first class or any county having an approved disease control program for the acquisition or implementation of a wood utilization or disposal system.

(b) The commissioner shall promulgate rules for the administration of grants authorized by this subdivision. The rules shall establish and contain as a minimum:

- (1) Procedures for grant applications;
- (2) Conditions and procedures for the administration of grants;
- (3) Criteria of eligibility for grants including, but not limited to, those specified in this subdivision; and
- (4) Other matters the commissioner may find necessary to the proper administration of the grant program.

(c) Grants-in-aid payments for wood utilization and disposal systems made by the commissioner pursuant to this subdivision shall not exceed 50 percent of the total cost of the



system. Grants for sanitation and reforestation shall be combined into one grant program. Grants to any municipality for sanitation shall not exceed 50 percent of sanitation costs approved by the commissioner including any amount of sanitation costs paid by special assessments, ad valorem taxes, federal grants or other funds. A municipality shall not specially assess a property owner any amount greater than the amount of the tree's sanitation cost minus the amount of the tree's sanitation cost reimbursed by the commissioner. Grants to municipalities for reforestation shall not exceed 50 percent of the cost, but not more than \$50 per tree, of trees planted pursuant to the reforestation program; provided that a reforestation grant to any county may include 90 percent of the cost, but not more than \$60 per tree, of the first 50 trees planted on public property in a town not described in subdivision 1 and of less than 1,000 population upon the town's application to the county. Reforestation grants to towns and home rule charter or statutory cities as described in subdivision 1 of less than 4,000 population with an approved disease control program may include 90 percent of the cost, but not more than \$60 per tree, of the first 50 trees planted on public property with the approval of the 1979 application. The governing body of any municipality which receives a reforestation grant pursuant to this section shall appoint up to seven residents of the municipality or designate an existing municipal board or committee to serve as a reforestation advisory committee to advise the governing body of the municipality in the administration of the reforestation program. For the purpose of this subdivision, "cost" shall not include the value of a gift or dedication of trees required by a municipal ordinance but shall include documented "in kind" services or voluntary work for municipalities with a population of less than 1,000 according to the most recent federal census.

(d) Based upon estimates submitted by the municipality to the commissioner, which shall state the estimated costs of sanitation and reforestation in the succeeding quarter under an approved program, the commissioner shall direct quarterly advance payments to be made by the state to the municipality commencing April 1, 1979. The commissioner shall direct adjustment of any overestimate in a succeeding quarter. A municipality may elect to receive the proceeds of its sanitation and reforestation grants on a periodic cost reimbursement basis.

(e) A home rule charter or statutory city, or county outside the metropolitan area or any municipality, as defined in subdivision 1, may submit an application for a grant authorized by this subdivision concurrently with its request for approval of a disease control program.

**Subd. 3b. Limitations upon grants to metropolitan area.** The commissioner shall not make grants for sanitation and reforestation or wood utilization and disposal systems in excess of 67 percent of the amounts appropriated for those purposes to the municipalities located within the metropolitan area, as defined in subdivision 1.

**Subd. 4. Subsidies to certain owners.** A municipality may provide subsidies to non-profit organizations, to owners of private residential property of five acres or less, to owners of property used for a homestead of more than five acres but less than 20 acres and to non-profit cemeteries, however organized, for the approved treatment or removal of diseased shade trees.

Notwithstanding any law to the contrary, an owner of property on which shade trees are located may contract with a municipality to provide protection against the cost of approved treatment or removal of diseased shade trees or shade trees that will contribute to the spread of shade tree diseases. Under such contracts, the municipality shall pay for the removal or approved treatment under such terms and conditions as may be determined by the governing body of the municipality.

**Subd. 5. Tree inspector.** (a) Within 75 days from March 31, 1974, the governing body of each municipality shall appoint a qualified person to administer the rules of the commissioner or the more stringent shade tree disease control ordinance who shall be known as the tree inspector. In accordance with the provisions of section 471.59, two or more municipalities may jointly appoint a tree inspector for the purpose of administering the rules or ordinance within their communities. In those municipalities which have not appointed a tree inspector upon the expiration of 75 days from March 31, 1974, the commissioner may appoint a tree inspector to serve the municipality until the municipality has made an appointment. If the commissioner is unable to make such appointment, the commissioner may assign a qualified employee of the department of agriculture to perform the duties of the tree inspector. The

expense of a tree inspector appointed by the commissioner shall be paid by the municipality. If an employee of the department of agriculture performs such duties the expense shall be billed to the municipality and paid into the state treasury and credited to the general fund.

(b) Upon a determination by the commissioner that a candidate for the position of the inspector is qualified, the commissioner shall issue a certificate of qualification to the tree inspector. Any person certified as a tree inspector by the commissioner is authorized upon prior notification to enter and inspect any public or private property which might harbor diseased shade trees.

(c) The commissioner may upon notice and hearing, decertify any tree inspector when it appears that said tree inspector has failed to act competently or in the public interest in the performance of duties. Such notice shall be provided and the hearing conducted in accordance with the provisions of chapter 14, governing contested case proceedings. Nothing in this clause shall limit or otherwise affect the authority of a municipality to dismiss or suspend a tree inspector at its discretion; except as otherwise provided by law.

Subd. 6. [Repealed, 1977 c 90 s 15]

Subd. 7. **Financing.** (a) A municipality may collect the amount assessed against the property under subdivision 2 as a special assessment and may issue obligations as provided in section 429.101, subdivision 1, provided that a municipality at its option make any assessment levied payable with interest in installments not to exceed five years from the date of the assessment.

(b) After a contract for the sanitation or approved treatment of trees on private property has been let, or the work commenced, the municipality may issue obligations to defray the expense of any such work financed by special assessments imposed upon private property. Section 429.091 shall apply to such obligations with the following modifications:

(1) such obligations shall be payable not more than five years from the date of issuance; and

(2) no election shall be required.

The certificates shall not be included in the net debt of the issuing municipality.

Subd. 8. **Deposit of proceeds in separate fund.** The proceeds of any tax levied, assessments and interest collected, or any bonds or certificates of indebtedness issued under subdivision 7 and any grants received under subdivision 3a, shall be deposited in the municipal treasury in a separate fund and expended only for the purposes authorized by this section.

Subd. 9. **Diagnostic laboratory.** The commissioner of agriculture shall operate a diagnostic laboratory for culturing diseased trees for positive identification of diseased shade trees.

Subd. 10. **Cooperation by university.** The University of Minnesota college of agriculture shall cooperate with the department of agriculture in control of shade tree disease. The college of agriculture shall also conduct research into means for identifying diseased shade trees, shall develop and evaluate control measures, shall develop means for disposing of and utilizing diseased shade trees.

Subd. 10a. **Experimental programs.** The commissioner may establish experimental programs for sanitation or treatment of shade tree diseases and for research into tree varieties most suitable for municipal reforestation. The research must include considerations of disease resistance, energy conservation, and other factors considered appropriate. The commissioner may make grants to municipalities, or enter into contracts with municipalities, nurseries, colleges, universities, or state or federal agencies in connection with experimental shade tree programs including research to assist municipalities in establishing priority designation areas for shade tree disease control and energy conservation.

Subd. 11. **Report to the legislature.** On or before January 31 each odd-numbered year, the commissioner shall report to the legislature on community shade tree disease and insect control programs and any experimental programs conducted under subdivision 10a during the previous fiscal biennium.

Subd. 12. **Sections 18.021 to 18.022 superseded.** The provisions of sections 18.021 to 18.022, which are inconsistent with Laws 1974, chapter 355 are hereby superseded for any municipality as defined in subdivision 1, clause (c).

Subd. 13. **Municipal option to participate in program.** After December 31, 1981, the term "municipality" shall include only those municipalities which have informed the commissioner of their intent to continue an approved disease control program. Any municipality desiring to participate in the grants-in-aid for the partial funding of municipal sanitation and reforestation programs must notify the commissioner in writing before the beginning of the calendar year in which it wants to participate and must have an approved disease control program during any year in which it receives grants-in-aid. Notwithstanding the provisions of any law to the contrary, no municipality shall be required to have an approved disease control program after December 31, 1981.

**History:** 1974 c 355 s 66; 1975 c 253 s 1-3,5; 1977 c 90 s 1-9; 1978 c 773 s 1,2; 1979 c 50 s 5; 1979 c 257 s 1,2,4; 1981 c 261 s 2; 1981 c 356 s 97; 1Sp1981 c 1 art 5 s 1; 1982 c 424 s 130; 1983 c 289 s 115 subd 1; 1984 c 640 s 32; 1985 c 248 s 70; 1Sp1985 c 14 art 4 s 4; 1986 c 444; 1987 c 312 art 1 s 1; 1987 c 396 art 11 s 2; 1Sp1989 c 1 art 5 s 2; 1991 c 116 s 1,2; 1995 c 233 art 2 s 56

#### 18.024 DISEASED SHADE TREE UTILIZATION.

Subdivision 1. **Wood utilization.** The departments of agriculture and natural resources, after consultation with the Minnesota shade tree advisory committee and the commissioner of public service, shall investigate, evaluate, and make recommendations to the legislature concerning the potential uses of wood from community trees removed due to disease or other disorders. These recommendations shall include maximum resource recovery through recycling, use as an alternative energy source, or use in construction or the manufacture of new products. Wood utilization or disposal systems as defined in section 18.023 must be included to ensure maximum utilization of diseased shade trees with designs and procedures to ensure public safety and to assure compliance with approved disease control programs.

Subd. 2. **Municipalities' programs.** A municipality operating a program of sanitation as defined in section 18.023 and conforming to all rules relating to shade tree disease control may, with due attention to the recommendations developed pursuant to subdivision 1, institute a program of wood utilization and disposal which will, to the extent practicable, encourage utilization of diseased trees including but not limited to making the trees available to the public for use as firewood.

**History:** 1979 c 299 s 1; 1981 c 356 s 98; 1983 c 289 s 115 subd 1; 1985 c 248 s 70; 1987 c 312 art 1 s 2; 1991 c 116 s 3; 1993 c 163 art 1 s 2

**18.03** [Repealed, 1959 c 35 s 19]

**18.031** [Repealed, 1976 c 53 s 29]

**18.032** [Repealed, 1976 c 53 s 29]

**18.0321** [Repealed, 1976 c 53 s 29]

**18.0322** [Repealed, 1976 c 53 s 29]

**18.0323** [Repealed, 1976 c 53 s 29]

**18.0324** [Repealed, 1976 c 53 s 29]

**18.033** [Repealed, 1976 c 53 s 29]

**18.034** [Repealed, 1976 c 53 s 29]

**18.035** [Repealed, 1976 c 53 s 29]

**18.036** [Repealed, 1976 c 53 s 29]

#### MOSQUITO ABATEMENT

**18.04** [Repealed, 1959 c 35 s 19]

#### 18.041 DEFINITIONS.

In sections 18.041 to 18.161, unless the context otherwise indicates: (a) "governmental unit" means any city, county, or town; (b) "governing body" means a council, board, body or

persons in which the powers of the governmental unit are vested; and (c) "mosquito abatement" means the control, abatement, or prevention of breeding of mosquitoes or such other insects or arachnids (ticks, mites, spiders) as provided in section 18.091.

**History:** 1949 c 404 s 1; 1973 c 123 art 5 s 7; 1983 c 216 art 2 s 28

**18.05** [Repealed, 1959 c 35 s 19]

### **18.051 DECLARATION OF POLICY.**

The abatement or suppression of mosquitoes of any kind, whether disease bearing or merely pestiferous, within any or all areas of the state, is advisable and necessary for the maintenance and betterment of the health, welfare and prosperity of the people thereof; and is found and declared to be for public purposes. All areas wherein mosquitoes incubate or hatch are declared to be public nuisances, as harmful or inimical to the health, welfare and prosperity of the inhabitants and may be abated as hereinafter provided. Therefore mosquito abatement may be undertaken, as provided in sections 18.041 to 18.161, in any or all areas of the state by any governmental unit.

**History:** 1949 c 404 s 2

**18.06** [Repealed, 1959 c 35 s 19]

### **18.061 MOSQUITO ABATEMENT; PROCEDURE.**

Subdivision 1. **Establishing local board.** Any governmental unit in this state shall have power to engage in mosquito abatement and to establish a mosquito abatement board (a) upon the adoption of a resolution to that effect by the governing body thereof, or (b) upon the adoption of a proposal to that effect by the voters of the governmental unit in the manner provided in subdivision 2.

Subd. 2. **Petition; hearing; election.** If a petition signed by five percent of the freeholders in a governmental unit according to the last assessment list, or 250 such freeholders, whichever is the lesser number, is presented to the governing body of any governmental unit requesting it to engage in mosquito abatement a public hearing shall be held thereon by the governing body within 15 days after the presentation of the petition and, if said governing body does not within 15 days thereafter adopt a resolution to undertake mosquito abatement, and if such petitioners within 15 days thereafter pay to the governing body the cost of publishing notice of the election, the governing body to whom the petition is addressed shall order a vote to be taken at the next regular election in the governmental unit (or town meeting in the case of the town) on the proposal to undertake mosquito abatement within said governmental unit. The governing body shall provide ballots to be used at the election or meeting. The ballot shall bear the words "Shall the (governmental unit) of ..... engage in mosquito abatement?" The question shall be followed with a line with the word "Yes" and a square after it and another line with the word "No" and a square after it. The voters shall indicate their choice by placing a cross mark in one of said squares and a direction to so indicate their choice shall be printed on the ballot. Such ballot shall be deposited in a separate ballot box to be provided and the result of such voting shall be duly canvassed, certified, and returned in the same manner and at the same time as other facts and returns of the election. If the majority of the electors voting on the question vote in the affirmative, the governing body shall take appropriate action as soon as possible to carry on mosquito abatement. If a proposal to undertake mosquito abatement be rejected by the voters it shall not be resubmitted to the voters for two years.

Subd. 3. **Discontinuing program.** Whenever any governmental unit by action of its governing body or voters shall have voted to engage in mosquito abatement, such abatement program may be discontinued in the following manner: (a) If the mosquito abatement was originally undertaken by resolution of the governing body, then by the adoption of a resolution to that effect by the governing body, or by the adoption of a proposal to that effect by the voters of the governmental unit in the manner provided in subdivision 4; and (b) if the mosquito abatement was originally undertaken by the adoption of a proposal to that effect by the voters of the governmental unit, then only by the adoption of a proposal to that effect by the voters of the governmental unit in the manner provided in subdivision 4.

**Subd. 4. Petition; hearing; and election to discontinue.** If a petition signed by five percent of the freeholders in a governmental unit according to the last assessment list, or 250 such freeholders, whichever is the lesser number, is presented to the governing body of any governmental unit engaged in mosquito abatement requesting it to discontinue mosquito abatement a public hearing shall be held thereon by the governing body within 15 days after presentation of the petition, and if said governing body does not within 15 days thereafter adopt a resolution to discontinue mosquito abatement, and if such petitioners within 15 days thereafter pay to the governing body the cost of publishing notice of the election, the governing body to whom the petition is addressed shall order a vote to be taken at the next regular election in the governmental unit (or town meeting in the case of a town) on the proposal to discontinue mosquito abatement within said governmental unit. The governing body shall provide ballots to be used at the election or meeting. The ballot shall bear the words "Shall the (governmental unit) of ..... discontinue mosquito abatement?" The question shall be followed with a line with the word "Yes" and a square after it and another line with the word "No" and a square after it. The voters shall indicate their choice by placing a cross mark in one of said squares and a direction to so indicate their choice shall be printed on the ballot. Such ballot shall be deposited in a separate ballot box to be provided and the result of such voting shall be duly canvassed, certified and returned in the same manner and at the same time as other facts and returns of the election. If a majority of the electors voting on the question vote in the affirmative, the governing body shall take appropriate action as soon as possible to discontinue mosquito abatement. If a proposal to discontinue mosquito abatement be rejected by the voters it shall not be resubmitted to the voters for two years.

**History:** 1949 c 404 s 3

**18.07** [Repealed, 1959 c 35 s 19]

#### **18.071 ABATEMENT BOARD.**

Whenever any governmental unit has decided, in the manner required by section 18.061 to engage in mosquito abatement, the governing body of the governmental unit shall appoint three freeholders of the unit to serve as members of a mosquito abatement board, which board shall have the powers specified in section 18.091. Each member of said board shall hold office at the pleasure of the governing body appointing that member and shall serve without compensation, except that board members may be reimbursed for actual expenses incurred in fulfillment of their duties on the board not in excess of \$60 annually.

**History:** 1949 c 404 s 4; 1986 c 444

**18.08** [Repealed, 1959 c 35 s 19]

#### **18.081 OFFICERS; MEETINGS.**

Immediately after their appointment and at the first meeting in each calendar year thereafter the board shall elect one of their number as chair, one as secretary, and one as treasurer, and shall elect such other officers as they consider necessary. The board shall provide for the time and place of holding regular meetings and may establish rules for proceedings. All meetings of the board shall be open to the public. Two members of the board shall constitute a quorum, but one member may adjourn from day to day. The board shall keep a written record of its proceedings and an itemized account of all expenditures and disbursements and such record and account shall be open at all reasonable times for public inspection.

**History:** 1949 c 404 s 5; 1986 c 444

**18.09** [Repealed, 1959 c 35 s 19]

#### **18.091 POWERS OF BOARD.**

Any mosquito abatement board, and any joint board established pursuant to section 18.131, shall have power, either by board action or through its members, officers, agent or employees, as may be appropriate: (a) to enter upon any property within the governmental unit at reasonable times to determine whether mosquito breeding exists thereon; (b) to take all necessary and proper steps for the abatement of mosquitoes and such insects and arach-

nids (ticks, mites, spiders) as the commissioner of agriculture may designate; (c) and subject to the paramount control of county and state authorities, to lagoon and clean up any stagnant pool of water and to clean up shores of lakes and streams and other breeding places for mosquitoes within the boundaries of the governmental unit; (d) to spray with insecticides, approved by the commissioner of agriculture, any area within the boundaries of the governmental unit that it finds to be a breeding place for mosquitoes or other insects or arachnids designated pursuant to (b) above; (e) to purchase such supplies and equipment and employ such labor and assistants as may be necessary and proper in mosquito abatement; (f) to accept gifts of money or equipment to be used for mosquito abatement; and (g) to enter into such contracts as may be necessary and proper to accomplish mosquito abatement.

**History:** 1949 c 404 s 6

**18.10** [Repealed, 1959 c 35 s 19]

### **18.101 COOPERATE WITH STATE DEPARTMENTS.**

Each mosquito abatement board and each governmental unit engaged in mosquito abatement shall cooperate with the University of Minnesota, the state department of agriculture, the state commissioner of health, the state department of natural resources, the state agricultural experiment station, and the state transportation department.

**History:** 1949 c 404 s 7; 1969 c 1129 art 3 s 1; 1976 c 166 s 7; 1977 c 305 s 45

**18.11** [Repealed, 1959 c 35 s 19]

### **18.111 TAX LEVY; COLLECTION; CERTIFICATES OF INDEBTEDNESS.**

Subdivision 1. **Levy.** An annual tax may be levied for mosquito abatement purposes on all taxable property in any governmental unit undertaking mosquito abatement as provided in sections 18.041 to 18.161. The tax shall be certified, levied, and collected in the same manner as other taxes levied by the governmental unit.

Subd. 2. **Certificates of indebtedness.** At any time after the annual tax levy has been certified to the county auditor, and not earlier than October tenth in any year, any governing body may, for the purpose of providing the necessary funds for mosquito abatement for the succeeding year, by resolution, issue and sell as many certificates of indebtedness as may be needed in anticipation of the collection of taxes so levied for the mosquito abatement fund, but certificates shall not be issued in excess of 50 percent of the amount named in the tax levy, as spread by the county auditor, to be collected for the use and benefit of the mosquito abatement fund, and no certificate shall be issued to become due and payable later than December thirty-first of the year succeeding the year in which the tax levy, certified to the county auditor, as aforesaid, was made. The certificates shall not be sold for less than par and accrued interest, and shall not bear a greater rate of interest than five percent per annum. Each certificate shall state upon its face that the proceeds of the certificate shall be used for the mosquito abatement fund, the total amount of the certificates so issued, and the whole amount embraced in the tax levy for that particular purpose. They shall be numbered consecutively and be in denominations of \$100 or a multiple thereof, and may have interest coupons attached, and shall be otherwise of such form and terms and be made payable at such place as will best aid in their negotiation. The proceeds of the tax assessed and collected, as aforesaid, on account of the fund, shall be irrevocably pledged for the redemption of the certificates so issued. The certificates shall be paid solely from the money derived from the levy for the year against which the certificates were issued, or, if they be not sufficient for such purpose, from the levy for the mosquito abatement fund in the next succeeding year. The money derived from the sale of the certificates shall be credited to the mosquito abatement fund for the calendar year immediately succeeding the making of the levy and shall not be used or spent until such succeeding year. No certificates for any year shall be issued until all certificates for prior years have been paid, nor shall any certificate be extended.

Subd. 3. **Deposit and use of funds.** All money received for mosquito abatement purposes, either by way of tax collection or the sale of certificates of indebtedness, shall be deposited in the treasury of the governmental unit to the credit of a special fund to be designated as the mosquito abatement fund, shall not be used for any other purpose, and shall be drawn

upon by the proper officials of the governmental unit upon the properly authenticated voucher of the mosquito abatement board. No money shall be paid from such fund except on orders drawn upon the officer of the governmental unit having charge of the custody of the mosquito abatement fund and signed by the chair and the secretary of the mosquito abatement board. Each mosquito abatement board shall annually file with the governing body of its governmental unit an itemized statement of all receipts and disbursements.

**History:** 1949 c 404 s 8; 1973 c 773 s 1; 1986 c 444; 1988 c 719 art 5 s 84; 1989 c 277 art 4 s 3; 1994 c 505 art 2 s 2

**18.12** [Repealed, 1959 c 35 s 19]

### **18.121 RULES, MOSQUITO ABATEMENT.**

**Subdivision 1. Agriculture.** The commissioner of agriculture, (a) may establish rules for the conduct of mosquito abatement operations of governmental units and boards engaged in mosquito abatement; (b) shall approve mosquito control plans and budgets of mosquito control boards before such plans can be put into operation; (c) may, if the commissioner considers it necessary, modify or revoke any approval the commissioner may have given to any mosquito control plan upon written notice to the governing body or mosquito abatement board; and (d) shall be *ex officio* a member of each mosquito abatement board, and the commissioner may appoint representatives to act for the commissioner as *ex officio* member of any such board.

**Subd. 2. Natural resources.** The commissioner of natural resources shall approve mosquito abatement plans or make such modifications as the commissioner deems necessary for the protection of public water, wild animals and natural resources before control operations are started and any such approval may, if the commissioner considers it necessary, be modified or revoked by the commissioner of natural resources at any time upon written notice to the governing body or mosquito abatement board.

**Subd. 3. Joint approval.** If any revision of previously approved plans are necessary during the mosquito control season, any such revision shall be made through joint approval of the commissioner of agriculture and the commissioner of natural resources.

**History:** 1949 c 404 s 9; 1961 c 113 s 1; 1969 c 1129 art 3 s 1; 1985 c 248 s 70; 1986 c 444

**18.13** [Repealed, 1961 c 127 art 1 s 8]

### **18.131 COOPERATION BETWEEN GOVERNMENTAL UNITS.**

When two or more adjacent governmental units shall have authorized mosquito abatement and appointed the members of the mosquito abatement board, the governing bodies of any such two or more governmental units may, by written contract, arrange for pooling mosquito abatement funds, apportioning all costs, cooperating in the use of equipment and personnel and for engaging jointly in mosquito abatement upon such terms and conditions and subject to such rules as may be mutually agreed upon. The immediate control and management of the joint project may, by the terms of the written contract, be entrusted to a joint committee composed of the chair of each of the boards or such other board members as may be agreed upon.

**History:** 1949 c 404 s 10; 1985 c 248 s 70; 1986 c 444

**18.14** [Renumbered 18.022 subds 1-4]

### **18.141 UNORGANIZED TOWNS; POWERS OF COUNTY BOARD.**

In any township of this state that is unorganized politically, the county board of the county wherein the township is situated shall have all the rights, powers and duties conferred by sections 18.041 to 18.161 upon the governing bodies of towns (including town boards) and in any such case the county board shall act as though it were the governing body and town board of said township and may authorize and undertake mosquito abatement in any such township and cause taxes to be levied for mosquito abatement the same as though said township were organized politically and said county board were the governing body and town

board thereof: Provided, that the cost of mosquito abatement in any such township shall be paid solely by a tax levy on the property within the township where mosquito abatement is undertaken and no part of the expense of mosquito abatement in said township shall be county expense or be paid by any such county.

**History:** 1949 c 404 s 11

**18.15** [Repealed, 1953 c 641 s 3]

**18.151 COST OF STATE'S SERVICE; REFUNDMENT.**

The actual cost to the state of any service rendered or expense incurred by the department of agriculture and department of natural resources under the provisions of sections 18.041 to 18.161 to or for the benefit of any mosquito abatement board shall be billed to the mosquito abatement board benefiting therefrom and be paid by it as other expenses of mosquito abatement.

**History:** 1949 c 404 s 12; 1969 c 1129 art 3 s 1

**18.16** [Repealed, 1953 c 641 s 3]

**18.161 PUBLIC FUNDS, EXPENDITURE, LIMITATION.**

Nothing contained in sections 18.041 to 18.151 shall be construed to authorize the expenditure of public funds by any governmental unit in excess of the amounts fixed in any law limiting the expenditures of any governmental unit on a per capita basis.

**History:** 1949 c 404 s 13

**GRASSHOPPERS ON PUBLIC  
UTILITY EASEMENTS**

**18.17** [Repealed, 1953 c 641 s 3]

**18.171** [Repealed, 1992 c 500 s 16]

**18.18** [Repealed, 1953 c 641 s 3]

**18.181** [Repealed, 1992 c 500 s 16]

**18.182** [Repealed, 1992 c 500 s 16]

**18.189** [Repealed, 1992 c 500 s 16]

**18.19** [Repealed, 1953 c 641 s 3]

**18.191** [Repealed, 1992 c 500 s 16]

**18.192** [Repealed, 1992 c 500 s 16]

**18.20** [Repealed, 1953 c 641 s 3]

**18.201** [Repealed, 1992 c 500 s 16]

**18.205 PUBLIC UTILITY EASEMENTS.**

For property that is subject to a public utility easement, the person controlling the surface of the land other than the holder of the public utility easement is the person responsible for control of grasshoppers under this chapter. For purposes of this section, a "public utility easement" means an easement used for the purpose of transmission, distribution, furnishing at wholesale or retail natural or manufactured gas, or electric or telephone service, by a public utility as defined in section 216B.02, subdivision 4, a cooperative electric association organized under chapter 308A, a telephone company as defined in section 237.01, subdivisions 2 and 3, or a municipality producing or furnishing gas, electric, or telephone service.

**History:** 1990 c 607 s 4

**18.21** Subdivision 1. [Repealed, 1959 c 35 s 19]



Subd. 2. [Renumbered 18.022 subd 5]

- 18.211 [Repealed, 1992 c 500 s 16]
- 18.22 [Renumbered 18.021]
- 18.221 [Repealed, 1992 c 500 s 16]
- 18.23 [Repealed, 1955 c 503 s 6]
- 18.231 [Repealed, 1992 c 500 s 16]
- 18.24 [Repealed, 1955 c 503 s 6]
- 18.241 [Repealed, 1992 c 500 s 16]
- 18.25 [Repealed, 1955 c 503 s 6]
- 18.251 [Repealed, 1992 c 500 s 16]
- 18.26 [Repealed, 1955 c 503 s 6]
- 18.261 [Repealed, 1992 c 500 s 16]
- 18.271 [Repealed, 1992 c 500 s 16]
- 18.272 [Repealed, 1992 c 500 s 16]
- 18.281 [Repealed, 1992 c 500 s 16]
- 18.291 [Repealed, 1992 c 500 s 16]
- 18.301 [Repealed, 1992 c 500 s 16]
- 18.31 [Renumbered 18.041]
- 18.311 [Repealed, 1992 c 500 s 16]
- 18.312 [Repealed, 1992 c 500 s 16]
- 18.315 [Repealed, 1992 c 500 s 16]
- 18.316 [Repealed, 1996 c 385 art 2 s 8]
- 18.317 [Repealed, 1996 c 385 art 2 s 8]
- 18.32 [Renumbered 18.051]
- 18.321 [Repealed, 1992 c 500 s 16]
- 18.322 [Repealed, 1992 c 500 s 16]
- 18.323 [Repealed, 1992 c 500 s 16]

### **BARBERRY AND MAHONIA BUSHES**

18.33 [Renumbered 18.061]

#### **18.331 CERTAIN BARBERRY AND MAHONIA BUSHES DECLARED NUISANCES.**

All barberry (*Berberis* Sp.) bushes and all Mahonia (*Mahonia* Sp.) bushes, except the species and variety known as Japanese barberry (*Berberis thunbergii*), are rust-producing species and are hereby declared to be a public nuisance and a menace to the public welfare and their maintenance, propagation, sale, or introduction into the state is forbidden. It shall be the duty of every person owning, occupying or having charge of any premises on which such bushes of the rust-producing varieties are grown, or at any time found growing, to forthwith destroy such bushes.

**History:** (6146) 1919 c 81 s 1

**18.332 AUTHORITY OF COMMISSIONER.**

The commissioner shall cause all such rust-producing Mahonia bushes or barberry bushes to be eradicated, shall make rules relating to the most convenient and expedient method of eradicating and destroying such rust-producing Mahonia bushes or barberry bushes, and shall appoint agents to enforce the provisions of sections 18.331 to 18.334. The commissioner and agents shall have free access, at all reasonable hours, to any premises to determine whether such rust-producing Mahonia bushes or barberry bushes are growing thereon. The commissioner shall require reports from the owners or occupants of any premises as to the presence of such bushes thereon.

**History:** (6147) 1919 c 81 s 2; 1957 c 724 s 2; 1985 c 248 s 70; 1986 c 444

**18.333 DESTRUCTION OF BUSHES.**

In pursuance of powers granted by sections 18.331 to 18.334, when the commissioner, or the commissioner's agents, shall have found Mahonia bushes or barberry bushes of such rust-producing varieties on any premises, it shall be the duty of the commissioner or the agents, as the case may be, to immediately notify, or cause to be notified, the owner or occupant of the premises on which such bushes are growing; such notice shall be sent to the owner or occupant in such form as the commissioner shall prescribe, and it shall be the duty of every occupant of land or, if the land is unoccupied, the owner thereof, or the owner's agent, or the public official in charge thereof, to cut down, otherwise destroy, or eradicate all such Mahonia bushes or barberry bushes as defined in section 18.77, subdivision 8, standing, being, or growing upon such land, or in such manner and at such times as may be directed or ordered by the commissioner or the commissioner's agents. The expense of such destruction shall be paid to the state commissioner by the owner of the premises within ten days after the rendition of a bill therefor, and if such costs shall not be paid within that time, the bill is hereby made a legal charge against the county or municipality in which the lands are located. After such cutting down, otherwise destroying or eradicating of noxious weeds, the officer causing the same to be done shall file verified and itemized statements of the costs of all services rendered in connection with serving of notices and cutting down, otherwise destroying or eradicating the noxious bushes on each separate tract or lot of land, with the county auditor or with the clerk of the municipality in which such lands are located, who shall immediately issue proper warrants to the persons named therein for the amount specified. The amount of such expenses shall constitute and be a lien in favor of the county or municipality, as the case may be, against the land involved and shall be certified to by the county auditor, the municipal clerk, and entered by the county auditor on the tax books as a tax upon such land, and shall be collected in the same manner as other real estate taxes are collected. The amount of such expenses, when collected shall be used to reimburse the county or municipality for its expenditure in this regard. Where the lands involved are located in unorganized territory, the expense of eradicating or destroying such bushes shall be paid by the county auditor out of the general revenue fund of the county, upon the verified itemized statement of the commissioner or the commissioner's agent and the amount of such payment shall be entered on the tax books as a tax on such lands and shall constitute and be a lien in favor of such county against the lands involved and shall be collected in the same manner as other real estate taxes are collected.

**History:** (6148) 1919 c 81 s 3; 1957 c 724 s 3; 1986 c 444; 1993 c 13 art 2 s 1

**18.334 CERTIFICATE OF COMMISSIONER.**

The commissioner or the commissioner's agent may, or when requested by any resident of the state shall, determine, or cause to be determined, whether or not the Mahonia bushes or barberry bushes grown on certain premises are of the rust-producing varieties. The commissioner shall make a certificate of findings and determination on the premises, which certificate shall be prima facie evidence of the facts therein recited. Such certificate may be received in evidence in any civil action arising under the provisions of sections 18.331 to 18.334.

**History:** (6149) 1919 c 81 s 4; 1957 c 724 s 4; 1986 c 444

**18.335 PENALTY.**

Any person violating any of the provisions of sections 18.331 to 18.334 is guilty of a misdemeanor.

**History:** 1961 c 127 art 1 s 4

- 18.34 [Renumbered 18.071]
- 18.341 [Renumbered 89.51]
- 18.35 [Renumbered 18.081]
- 18.351 [Renumbered 89.52]
- 18.36 [Renumbered 18.091]
- 18.361 [Renumbered 89.53]
- 18.37 [Renumbered 18.101]
- 18.371 [Renumbered 89.54]
- 18.38 [Renumbered 18.111]
- 18.381 [Renumbered 89.55]
- 18.39 [Renumbered 18.121]
- 18.391 [Renumbered 89.56]
- 18.40 [Renumbered 18.131]
- 18.401 [Renumbered 89.57]
- 18.41 [Renumbered 18.141]
- 18.411 [Renumbered 89.58]
- 18.42 [Renumbered 18.151]
- 18.421 [Renumbered 89.59]
- 18.422 [Renumbered 89.60]
- 18.423 [Renumbered 89.61]
- 18.43 [Renumbered 18.161]
- 18.431 [Repealed, 1987 c 109 s 13]
- 18.432 [Repealed, 1987 c 109 s 13]
- 18.433 [Repealed, 1987 c 109 s 13]
- 18.434 [Repealed, 1987 c 109 s 13]
- 18.435 [Repealed, 1987 c 109 s 13]
- 18.436 [Repealed, 1987 c 109 s 13]

**PLANT PEST ACT****18.44 PLANT PEST ACT.**

Sections 18.44 to 18.61 are the plant pest act.

**History:** 1959 c 35 s 1

**18.45 POLICY.**

The purpose of the plant pest act is to prevent the introduction into and the propagation and dissemination within this state of plant pests and to provide for their suppression and control.

**History:** 1959 c 35 s 2

**18.46 DEFINITIONS.**

Subdivision 1. The terms appearing in the plant pest act mean and include:

Subd. 2. Plant: Any living organism, consisting of one or more cells, which does not typically exhibit voluntary motion or possess sensory or nervous organs.

Subd. 3. Nursery stock: Nursery stock includes: all hardy deciduous and evergreen trees, shrubs, vines, and other plants having a woody stem, whether wild or cultivated, and parts thereof which are for and capable of propagation.

Subd. 3a. **Hardy.** "Hardy" describes a plant that can survive the normal winters in Minnesota without artificial protection.

Subd. 4. Certified nursery stock: The term certified nursery stock means nursery stock which has been inspected and found apparently free of plant pests by the commissioner.

Subd. 5. A nursery: A nursery is any place where nursery stock is grown for sale or distribution.

Subd. 6. **Nursery stock grower.** "Nursery stock grower" means a person who owns, leases, manages, or is in charge of a nursery.

Subd. 7. Nursery inspector: A nursery inspector is one who has been assigned the duties of nursery inspection by the commissioner.

Subd. 8. A person: A person includes a corporation, company, society, association, partnership, or any individual or combination of individuals or any political subdivision or school district of the state.

Subd. 9. **Nursery stock dealer.** "Nursery stock dealer" means a person who obtains nursery stock for the purpose of sale or distribution and includes any person who sells and distributes for more than one nursery stock grower. A person who purchases more than half of the nursery stock offered for sale at a sales location during the current certificate year shall be considered a nursery stock dealer rather than a nursery stock grower for the purposes of determining a proper fee schedule.

Subd. 9a. **Landscaper.** "Landscaper" is a nursery stock dealer who obtains certified nursery stock for immediate sale, distribution, or installation and who does not grow or maintain nursery stock for resale.

Subd. 10. An agent: An agent is any person who sells or offers for sale nursery stock under the partial or full control of a nursery operator or a dealer.

Subd. 11. Greenhouse: A greenhouse is an enclosure of glass or similar material, which is ordinarily used to maintain suitable conditions under which plants may be grown.

Subd. 12. A greenhouse operator: A greenhouse operator means any person who operates a commercial greenhouse.

Subd. 13. Plant pests: Plant pests shall include any form of plant or animal life, including any disease producing organism dangerous to plants of the state. Alternate hosts of any plant disease are included in this definition.

Subd. 14. [Repealed, 1996 c 310 s 1]

Subd. 15. Tag: A tag is a label which has been approved by the commissioner for use in the transportation or sale of nursery stock.

Subd. 16. Private places: Private places shall be deemed to include every place except a private home.

**History:** 1959 c 35 s 3; 1961 c 113 s 1; 1973 c 550 s 1; 1986 c 444; 1991 c 254 art 3 s 2-4; 1993 c 138 s 1,2

**18.47 COMMISSIONER TO EMPLOY ENTOMOLOGISTS.**

The commissioner may employ entomologists and such other employees as are necessary to carry out the provisions of the plant pest act who shall be classified civil service employees.

**History:** 1959 c 35 s 4

**18.48 AUTHORITY.**

Subdivision 1. **Entry and inspection.** The commissioner may enter and inspect any public and private place which might harbor plant pests and may require that the owner de-

stroy or treat plant pests, plants or other material. Should the owner fail to properly comply with a directive of the commissioner within a given period of time, the commissioner may have any necessary work done at the owner's expense. If the owner does not reimburse the commissioner for such expense within a time period to be specified by the commissioner, the expense is a charge upon the county as provided in subdivision 4. If a dangerous plant pest infestation or infection threatens plants of any area within the state, the commissioner shall have the power to take any measures necessary to eliminate or alleviate the danger. The commissioner has the authority to collect fees as may be required by the plant pest act. The commissioner may issue and enforce a written or printed "stop-sale" order to the owner or custodian of any nursery stock if fees required by the plant pest act are not paid. The commissioner's order shall direct that the nursery stock shall be held at a designated place until the required fees have been paid and the nursery stock is released in writing by the commissioner. However, the owner or custodian has the right to appeal from such order to a court of competent jurisdiction in the county or city where the nursery stock is found, praying for a judgment as to the justification of the order, and for the discharge of the nursery stock from the order prohibiting the sale in accordance with the findings of the court. The provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of the plant pest act. The commissioner shall release the nursery stock held under any stop-sale order when the required fees have been paid and upon payment of all reasonable costs and expenses incurred in connection with such order. The commissioner may not be held liable for the deterioration of nursery stock during the period for which it is held pursuant to a stop-sale order.

**Subd. 2. Rules.** The commissioner may make reasonable rules, after a public hearing, in the manner provided by law, to properly carry out purposes of sections 18.44 to 18.61 and acts amendatory thereof, including but not limited to rules in regard to labeling and the maintenance of viability and vigor of nursery stock.

**Subd. 3. Quarantines.** The commissioner may promulgate a quarantine to restrict or prohibit the transportation of plants or other materials capable of carrying plant pests into or through any part of the state.

**Subd. 4. Collection of charges for work done for owner.** Should the commissioner be caused any expense in conjunction with carrying out any of the provisions of subdivision 1 and not be reimbursed by the owner of the land, such expense is hereby made a legal charge against the county in which the land is located. After such expense is incurred, the commissioner shall file verified and itemized statements of the cost of all service rendered with the county auditor of the county in which the land is located, who shall immediately issue proper warrants to the persons named therein, for the amount specified. The amount of such expense is a lien in favor of the county against the land involved and shall be certified to by the county auditor and entered on the auditor's tax books as a tax upon such lands and shall be collected as other real estate taxes are collected. The amount of such expenses, when collected, shall be used to reimburse the county in this regard.

**History:** 1959 c 35 s 5; Ex1961 c 63 s 1; 1963 c 114 s 1,2; 1985 c 248 s 70; 1986 c 444

#### 18.49 INSPECTION REQUIRED.

**Subdivision 1. Yearly inspection.** It shall be unlawful for any person to sell or offer for sale any nursery stock which has not within the preceding 12 months been officially inspected and found apparently free from plant pests.

**Subd. 2. Certificate.** It is unlawful for a person to sell or distribute nursery stock to a nursery stock dealer or nursery stock grower who does not have a valid grower's or dealer's certificate.

**History:** 1959 c 35 s 6; Ex1961 c 63 s 2; 1986 c 444; 1991 c 254 art 3 s 5

#### 18.50 THE SALE OF VIABLE NURSERY STOCK.

All nursery stock and related plant products sold or offered for sale shall be in a sound, healthy condition and shall be stored and displayed under conditions which will maintain their vigor. Said stock which is dead or so seriously weakened by drying, excessive heat or

cold, or any other condition that, in the judgment of the nursery inspector, it will be unable to grow with normal vigor when given reasonable care, shall not be sold or offered for sale.

**History:** 1959 c 35 s 7

### 18.51 NURSERY STOCK GROWER'S CERTIFICATE.

Subdivision 1. **Certificate required.** Each nursery stock grower shall obtain a nursery stock grower's certificate from the commissioner. Said certificate shall be obtained before offering nursery stock for sale or distribution. Each certificate shall expire on December 31 of each year.

Subd. 2. **Fees; penalty.** A nursery stock grower shall pay an annual fee before the commissioner shall issue a certificate of inspection. This fee shall be based on the area of all of the nursery stock grower's nurseries as follows:

Nurseries:	
(1) 1/2 acre or less	\$70 per nursery stock grower
(2) Over 1/2 acre to and including 2 acres	\$85 per nursery stock grower
(3) Over 2 acres to and including 10 acres	\$150 per nursery stock grower
(4) Over 10 acres to and including 50 acres	\$400 per nursery stock grower
(5) Over 50 acres	\$725 per nursery stock grower for the first 50 acres and \$1 per acre for each additional acre

A penalty of 25 percent of the fee due shall be charged for any application for renewal not received by January 1 of the year following expiration of a certificate.

**History:** 1959 c 35 s 8; 1969 c 1148 s 1; 1973 c 550 s 2; 1981 c 356 s 259; 1983 c 293 s 31; 1986 c 444; 1987 c 358 s 40; 1991 c 254 art 3 s 6

### 18.52 DEALERS' AND AGENTS' CERTIFICATES.

Subdivision 1. **Certificates required.** A nursery stock dealer certificate shall be obtained by every nursery stock dealer for each location before offering nursery stock for sale or distribution unless the nursery stock dealer holds a valid greenhouse or nursery stock grower's certificate either of which will permit a single sales location. This certificate or a duplicate thereof shall be displayed in a prominent manner at each place where nursery stock is offered for sale. A certificate to sell or distribute certified nursery stock may be obtained by a nursery stock dealer or by an agent through a principal, from the commissioner. The commissioner may refuse to issue a nursery stock dealer or agent certificate for cause.

Subd. 2. **Expiration.** Said certificate shall expire annually on December 31.

Subd. 3. **List of sources.** Each person applying for a certificate shall list the sources of nursery stock the person proposes to sell and distribute and shall furnish the commissioner such other reports as may be required.

Subd. 4. **Agents.** Each agent shall carry an agent's certificate which bears a copy of the nursery certificate held by the principal. This certificate shall be offered upon any reasonable request for identification. The agent's certificate shall be issued by the commissioner upon the written request of the principal.

Subd. 5. **Fees; penalty.** A nursery stock dealer shall pay an annual fee based on the dealer's gross sales during the preceding certificate year. A nursery stock dealer operating for the first year will pay the minimum fee.

**Dealers:**

(1) Gross sales up to \$5,000	at a location \$70 per location
(2) Gross sales over \$5,000 up to \$10,000	at a location \$100 per location
(3) Gross sales over \$10,000 up to \$25,000	at a location \$200 per location
(4) Gross sales over \$25,000 up to \$75,000	at a location \$300 per location
(5) Gross sales over \$75,000 up to \$100,000	at a location \$400 per location
(6) Gross sales over \$100,000 up to \$250,000	at a location \$500 per location
(7) Gross sales over \$250,000	at a location \$600 per location

In addition to the above fees, a penalty of 25 percent of the fee due shall be charged for any application for renewal not received by January 1 of the year following expiration of a certificate.

**History:** 1959 c 35 s 9; 1963 c 114 s 3; 1969 c 1148 s 2; 1973 c 550 s 3; 1981 c 356 s 260; 1983 c 293 s 32; 1986 c 444; 1987 c 358 s 41; 1991 c 254 art 3 s 7,8; 1996 c 330 s 1,2

**18.525 EXEMPT SALES.**

An organization does not need to obtain a nursery stock dealer certificate before offering certified nursery stock for sale or distribution if the organization:

- (1) is a nonprofit charitable, educational, or religious organization;
- (2) conducts sales or distributions of certified nursery stock on 14 or fewer days in a calendar year; and
- (3) uses the proceeds from its certified nursery stock sales or distributions for charitable, educational, or religious purposes.

The organization must notify the commissioner, prior to any sales or distributions of certified nursery stock and must demonstrate to the commissioner, if requested, that such sales or distributions will be conducted on 14 or fewer days in the calendar year, as provided in clause (2).

**History:** 1993 c 138 s 3; 1993 c 209 s 1; 1993 c 366 s 24

**18.53 GREENHOUSE CERTIFICATION.**

The commissioner may inspect and certify greenhouses and greenhouse plants as being free from plant pests upon request of the greenhouse operator and issue a greenhouse certificate. The fee is \$50 for each greenhouse operator. The certificate expires on December 31 next following the date of issue.

**History:** 1959 c 35 s 10; 1975 c 412 s 3; 1983 c 293 s 33; 1986 c 444; 1987 c 358 s 42; 1996 c 330 s 3

**18.54 LOCAL SALES AND MISCELLANEOUS.**

Subdivision 1. **Services and fees.** The commissioner may make small lot inspections or perform other necessary services for which another charge is not specified. For these services the commissioner shall set a fee plus expenses that will recover the cost of performing this service, as provided in section 16A.1285. The commissioner may set an additional acreage

fee for inspection of seed production fields for exporters in order to meet domestic and foreign plant quarantine requirements.

**Subd. 2. Virus disease-free certification.** The commissioner shall have the authority to provide special services such as virus disease-free certification and other similar programs. Participation by nursery stock growers shall be voluntary. Plants offered for sale as certified virus-free must be grown according to certain procedures in a manner defined by the commissioner for the purpose of eliminating viruses and other injurious disease or insect pests. The commissioner shall collect reasonable fees from participating nursery stock growers for services and materials that are necessary to conduct this type of work, as provided in section 16A.1285.

**History:** 1959 c 35 s 11; Ex1961 c 63 s 3; 1969 c 1148 s 3; 1975 c 412 s 4; 1981 c 356 s 261; 1983 c 293 s 34; 1986 c 444; 1991 c 254 art 3 s 9; 1996 c 305 art 3 s 3,4

### 18.55 RECIPROCITY WITH OTHER STATES.

**Subdivision 1. Out-of-state nursery stock grower, dealer, or agent.** A nursery stock grower, dealer, or agent from another state which issues certificates to nursery stock growers, dealers, or agents of Minnesota on the same or similar basis as to nursery stock growers, dealers, or agents of such state may operate in Minnesota upon complying with the plant pest act without procuring a Minnesota certificate. Any person from another state shipping nursery stock into Minnesota shall be accorded treatment similar to that which is required of Minnesota nursery stock growers, dealers, or agents who ship or sell nursery stock in such state. No reciprocity shall be extended under this section until the commissioner has first determined which states issue certificates to nursery stock growers, dealers, or agents of Minnesota on the same or similar basis as to nursery stock growers, dealers, or agents of such states.

**Subd. 2. Filing out-of-state certificates of inspection.** Each out-of-state nursery stock grower or dealer whose nursery stock is sold, offered for sale, or distributed within this state shall file a certified current copy of an out-of-state certificate in the office of the commissioner. The commissioner may accept, in lieu of such individual certificates, a certified list of current certified nursery stock growers or dealers from the regulatory agency having jurisdiction in the state of origin, and may distribute such lists to persons in the state of Minnesota requesting them. The commissioner also may supply certified lists of certified Minnesota nursery stock growers and dealers offering nursery stock for sale in Minnesota and other states on request of any person. If any certified nursery stock grower or dealer has violated any provisions of the plant pest act, the filed certificate will be voided or the person's name will be stricken from the appropriate certified list.

**History:** 1959 c 35 s 12; 1975 c 180 s 3; 1986 c 444; 1991 c 254 art 3 s 10

### 18.56 TAGS.

A tag bearing a reasonable facsimile of the nursery stock grower or dealer certificate shall be attached to every package or bundle of nursery stock sold or transported by any person. The form of each tag shall be approved by the commissioner before being used.

**History:** 1959 c 35 s 13; 1991 c 254 art 3 s 11

### 18.57 CARRIERS NOT TO ACCEPT UNTAGGED STOCK.

All carriers for hire, including railroad companies, express companies and truck lines shall not accept nursery stock which is not tagged with a valid tag of the nursery stock grower or dealer making the shipment. The carrier shall promptly notify the commissioner regarding any prohibited shipment.

**History:** 1959 c 35 s 14; 1991 c 254 art 3 s 12

### 18.58 [Repealed, 1996 c 310 s 1]

### 18.59 VIOLATIONS.

It shall be a violation of the plant pest act for any person:

- (1) to hinder or prevent the commissioner from carrying out the duties of the act.



(2) to sell, transport, or offer for sale nursery stock which has not been inspected and certified, by a duly authorized nursery inspector, to be apparently free of plant pests.

(3) to fail to carry out the treatment or destruction of condemned plants or other material after official notification by the commissioner.

(4) to use an invalid certificate of inspection or shipping tag in the sale or distribution of nursery stock covered by sections 18.44 to 18.61.

(5) to misrepresent or mislabel nursery stock as to vigor, hardiness and viability.

(6) to violate any quarantine promulgated by the commissioner in accordance with the act.

(7) to fail to comply with any provision of the plant pest act, or any rules promulgated thereunder.

(8) to possess nursery stock or have it on the premises for the purposes of sale or disposition without a valid certificate of inspection, dealer's certificate or greenhouse certificate.

**History:** 1959 c 35 s 16; Ex1961 c 63 s 4; 1985 c 248 s 70; 1986 c 444

### 18.60 PENALTIES.

Subdivision 1. **Certificate revocation.** In addition to or in lieu of administrative penalties under subdivision 2, the certificate of any person violating any of the provisions of the plant pest act may be suspended or revoked by the commissioner.

Subd. 2. **Administrative penalty.** The commissioner may impose an administrative penalty on a person who violates sections 18.44 to 18.61. For a first violation, the commissioner may impose an administrative penalty of not more than \$1,000 for each violation. For a second or succeeding violation, the commissioner may impose an administrative penalty of not more than \$1,500 for each violation. Each day a violation continues is a separate violation. In determining the amount of the administrative penalty to be assessed under this section, the commissioner shall consider the gravity of the offense, the size of the business involved, and the effect of the penalty on the person's ability to continue in business.

Subd. 3. **Appeal.** A person adversely affected by an act, order, or ruling made under this section, or a rule adopted under the plant pest act, may appeal under chapter 14.

**History:** 1959 c 35 s 17; 1985 c 248 s 70; 1986 c 444; 1991 c 254 art 3 s 13

### 18.61 ENFORCEMENT.

It shall be the duty of every prosecuting officer to whom the commissioner shall report any violation of the plant pest act or any of the rules promulgated thereunder to cause appropriate proceedings to be commenced and prosecuted in the proper courts without delay for the enforcement of the penalties as provided in such case.

**History:** 1959 c 35 s 18; 1985 c 248 s 70; 1986 c 444

## INTERSTATE PEST CONTROL COMPACT

### 18.62 ENACTMENT; INSURANCE FUND; ADMINISTRATION; FINANCE.

The pest control compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

#### PEST CONTROL COMPACT

##### ARTICLE I

##### Findings

The party states find that:

(a) In the absence of the higher degree of cooperation among them possible under this compact, the annual loss of approximately seven billion dollars from the depredations of pests is virtually certain to continue, if not to increase.

(b) Because of varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.

(c) The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.

(d) While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crop and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an Insurance Fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interests, the most equitable means of financing cooperative pest eradication and control programs.

## ARTICLE II Definitions

As used in this compact, unless the context clearly requires a different construction:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) "Requesting state" means a state which invokes the procedures of the compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.

(c) "Responding state" means a state requested to undertake or intensify the measures referred to in subdivision (a) of this Article.

(d) "Pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses or other plants of substantial value.

(e) "Insurance Fund" means the Pest Control Insurance Fund established pursuant to this compact.

(f) "Governing Board" means the administrators of this compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this compact.

(g) "Executive Committee" means the committee established pursuant to Article V (e) of this compact.

## ARTICLE III The Insurance Fund

There is hereby established the Pest Control Insurance Fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this compact. The Insurance Fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the insurance fund shall not accept any donation or grant whose terms are inconsistent with any provision of this compact.

## ARTICLE IV The Insurance Fund, Internal Operations and Management

(a) The Insurance Fund shall be administered by a Governing Board and Executive Committee as hereinafter provided. The actions of the Governing Board and Executive Committee pursuant to this compact shall be deemed the actions of the Insurance Fund.

(b) The members of the Governing Board shall be entitled to one vote each on such Board. No action of the Governing Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Governing Board are cast in favor thereof. Ac-

tion of the Governing Board shall be only at a meeting at which a majority of the members are present.

(c) The Insurance Fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the Governing Board may provide.

(d) The Governing Board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The Governing Board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the Governing Board. The Governing Board shall make provision for the bonding of such of the officers and employees of the Insurance Fund as may be appropriate.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Insurance Fund and shall fix the duties and compensation of such personnel. The Governing Board in its bylaws shall provide for the personnel policies and programs of the Insurance Fund.

(f) The Insurance Fund may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation.

(g) The Insurance Fund may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation, gift or grant accepted by the Governing Board pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the Insurance Fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender.

(h) The Governing Board shall adopt bylaws for the conduct of the business of the Insurance Fund and shall have the power to amend and rescind these bylaws. The Insurance Fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(i) The Insurance Fund annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. The Insurance Fund may make such additional reports as it may deem desirable.

(j) In addition to the powers and duties specifically authorized and imposed, the Insurance Fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this compact.

## ARTICLE V

### Compact and Insurance Fund Administration

(a) In each party state there shall be a compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:

1. Assist in the coordination of activities pursuant to the compact in his state; and
2. Represent his state on the Governing Board of the Insurance Fund.

(b) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the Governing Board of the Insurance Fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the Governing Board or on the Executive Committee thereof.

(c) The Governing Board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the Insurance Fund and, consistent with

the provisions of the compact, supervising and giving direction to the expenditure of moneys from the Insurance Fund. Additional meetings of the Governing Board shall be held on call of the chairman, the Executive Committee, or a majority of the membership of the Governing Board.

(d) At such times as it may be meeting, the Governing Board shall pass upon applications for assistance from the Insurance Fund and authorize disbursements therefrom. When the Governing Board is not in session, the Executive Committee thereof shall act as agent of the Governing Board, with full authority to act for it in passing upon such applications.

(e) The Executive Committee shall be composed of the chairman of the Governing Board and four additional members of the Governing Board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The Governing Board shall make such geographic groupings. If there is representation of the United States on the Governing Board, one such representative may meet with the Executive Committee. The chairman of the Governing Board shall be chairman of the Executive Committee. No action of the Executive Committee shall be binding unless taken at a meeting at which at least four members of such Committee are present and vote in favor thereof. Necessary expenses of each of the five members of the Executive Committee incurred in attending meetings of such Committee, when not held at the same time and place as a meeting of the Governing Board, shall be charges against the Insurance Fund.

## ARTICLE VI

### Assistance and Reimbursement

(a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

1. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this compact.

2. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this compact.

(b) Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the Governing Board to authorize expenditures from the Insurance Fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys made available from the Insurance Fund expeditiously and efficiently to assist in affording the protection requested.

(c) In order to apply for expenditures from the Insurance Fund, a requesting state shall submit the following in writing:

1. A detailed statement of the circumstances which occasion the request for the invoking of the compact.

2. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass or other plant having a substantial value to the requesting state.

3. A statement of the extent of the present and projected program of the requesting state and its subdivisions, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control, or prevention of introduction of the pest concerned.

4. Proof that the expenditures being made or budgeted as detailed in item 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if

there is a reduction, the reasons why the level of program detailed in item 3 constitutes a normal level of pest control activity.

5. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the compact in the particular instance can be abated by a program undertaken with the aid of moneys from the Insurance Fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.

6. Such other information as the Governing Board may require consistent with the provisions of this compact.

(d) The Governing Board or Executive Committee shall give due notice of any meeting at which an application for assistance from the Insurance Fund is to be considered. Such notice shall be given to the compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

(e) Upon the submission as required by paragraph (c) of this Article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this compact and justified thereby, the Governing Board or Executive Committee shall authorize support of the program. The Governing Board or the Executive Committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the Governing Board or Executive Committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

(f) A requesting state which is dissatisfied with a determination of the Executive Committee shall upon notice in writing given within twenty days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the Governing Board. Determinations of the Executive Committee shall be reviewable only by the Governing Board at one of its regular meetings, or at a special meeting held in such manner as the Governing Board may authorize.

(g) Responding states required to undertake or increase measures pursuant to this compact may receive moneys from the Insurance Fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the Insurance Fund. The Governing Board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

(h) Before authorizing the expenditure of moneys from the Insurance Fund pursuant to an application of a requesting state, the Insurance Fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.

(i) The Insurance Fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the Insurance Fund, cooperating federal agencies, states and any other entities concerned.

## ARTICLE VII

### Advisory and Technical Committees

The Governing Board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations. Upon request of the Governing Board or Executive Committee an advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the Insurance Fund being considered by such Board or Committee and the Board or Committee may receive and consider the same: Provided that any participant in a meeting of the Governing Board or

Executive Committee held pursuant to Article VI (d) of the compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the Governing Board or Executive Committee makes its disposition of the application.

#### ARTICLE VIII

##### Relations with Nonparty Jurisdictions

(a) A party state may make application for assistance from the Insurance Fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the Governing Board or Executive Committee in the same manner as an application with respect to a pest within a party state, except as provided in this Article.

(b) At or in connection with any meeting of the Governing Board or Executive Committee held pursuant to Article VI (d) of this compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the Governing Board or Executive Committee may provide. A nonparty state shall not be entitled to review of any determination made by the Executive Committee.

(c) The Governing Board or Executive Committee shall authorize expenditures from the Insurance Fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The Governing Board or Executive Committee may set any conditions which it deems appropriate with respect to the expenditure of moneys from the Insurance Fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the Insurance Fund with respect to expenditures and activities outside of party states.

#### ARTICLE IX

##### Finance

(a) The Insurance Fund shall submit to the executive head or designated officer or officers of each party state a budget for the Insurance Fund for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The requests for appropriations shall be apportioned among the party states as follows: One-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the Insurance Fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

(c) The financial assets of the Insurance Fund shall be maintained in two accounts to be designated respectively as the "Operating Account" and the "Claims Account." The Operating Account shall consist only of those assets necessary for the administration of the Insurance Fund during the next ensuing two-year period. The Claims Account shall contain all moneys not included in the Operating Account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the Insurance Fund for a period of three years. At any time when the Claims Account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the Governing Board shall reduce its budget requests on a pro rata basis in such manner as to keep the Claims Account within such maximum limit. Any moneys in the Claims Account by virtue of conditional donations, grants or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such moneys are available to meet demands arising out of claims.

(d) The Insurance Fund shall not pledge the credit of any party state. The Insurance Fund may meet any of its obligations in whole or in part with moneys available to it under Article IV (g) of this compact, provided that the Governing Board takes specific action set-

ting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the Insurance Fund makes use of moneys available to it under Article IV (g) hereof, the Insurance Fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.

(e) The Insurance Fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Insurance Fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Insurance Fund shall be audited yearly by a certified or licensed public accountant and a report of the audit shall be included in and become part of the annual report of the Insurance Fund.

(f) The accounts of the Insurance Fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the Insurance Fund.

#### ARTICLE X

##### Entry Into Force and Withdrawal

(a) This compact shall enter into force when enacted into law by any five or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

#### ARTICLE XI

##### Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

**History:** 1969 c 1020 s 1

#### 18.63 STATE COOPERATION.

Consistent with law and within available appropriations, the departments, agencies and officers of this state may cooperate with the insurance fund established by the pest control compact.

**History:** 1969 c 1020 s 2

#### 18.64 BYLAWS AND AMENDMENTS; FILING.

Pursuant to article IV (h) of the compact, copies of bylaws and amendments thereto shall be filed in the office of the department of agriculture of the state of Minnesota.

**History:** 1969 c 1020 s 3

#### 18.65 ADMINISTRATOR; COMMISSIONER OF AGRICULTURE.

The compact administrator for this state shall be the commissioner of agriculture appointed by the governor. The duties of the compact administrator shall be deemed a regular part of the duties of the commissioner's office.

**History:** 1969 c 1020 s 4; 1986 c 444

**18.66 REQUEST FOR ASSISTANCE.**

Within the meaning of article VI (b) or VIII (a), a request or application for assistance from the Insurance Fund may be made by the governor or the commissioner of agriculture whenever in the official's judgment the conditions qualifying this state for such assistance exist and it would be in the best interest of this state to make such request.

**History:** 1969 c 1020 s 5; 1986 c 444

**18.67 APPROPRIATION; ACCEPTANCE OF FUNDS.**

There is hereby appropriated out of the general fund in the state treasury to the department of agriculture for the purposes of sections 18.62 to 18.71 during the biennium beginning on July 1, 1969, the sum of \$29,000. The department of agriculture shall have credited to its account in the state treasury the amount or amounts of any payments made to this state to defray the cost of such program, or any part thereof, or as reimbursement thereof, and moneys so credited are appropriated to the department of agriculture for the purposes of sections 18.62 to 18.71.

**History:** 1969 c 399 s 1; 1969 c 1020 s 6

**18.68 FILING OF DOCUMENTS; NOTICES.**

Filing of documents as required by the compact set forth in sections 18.62 to 18.71 shall be with the department of agriculture. Any and all notices required by commission bylaws to be given pursuant to article VI, clause (d) of the compact shall be given to the commissioner of agriculture of this state or the commissioner's alternate, if any.

**History:** 1969 c 1020 s 7; 1986 c 444

**18.69 BUDGET; LIMITATIONS.**

Pursuant to article IX, clause (a) of the compact, the governing board shall submit its budget to the commissioner of agriculture. Such budget and the state's share thereof shall be subject to the provisions of chapter 16A, and any act amendatory thereof.

**History:** 1969 c 1020 s 8; 1977 c 410 s 10

**18.70 LEGISLATIVE AUDITOR.**

Pursuant to article IX, clause (f) of the compact, the legislative auditor is hereby empowered and authorized to inspect the accounts of the insurance fund as a part of the auditor's audit of the department of agriculture.

**History:** 1969 c 1020 s 9; 1973 c 492 s 14; 1986 c 444

**18.71 GOVERNOR AS EXECUTIVE HEAD.**

As used in the compact, with reference to this state, the term "executive head" shall mean the governor.

**History:** 1969 c 1020 s 10

**MINNESOTA NOXIOUS WEED LAW****18.75 PURPOSE.**

It is the policy of the legislature that residents of the state be protected from the injurious effects of noxious weeds on public health, the environment, public roads, crops, livestock, and other property. Sections 18.76 to 18.88 contain procedures for controlling and eradicating noxious weeds on all lands within the state.

**History:** 1992 c 500 s 1

**18.76 CITATION.**

Sections 18.76 to 18.88 may be cited as the "Minnesota noxious weed law."

**History:** 1992 c 500 s 2



**18.77 DEFINITIONS.**

Subdivision 1. **Scope.** The definitions in this section apply to sections 18.76 to 18.88.

Subd. 2. [Repealed, 1996 c 310 s 1]

Subd. 3. **Control.** "Control" means to destroy the aboveground growth of noxious weeds by a lawful method that prevents the maturation and spread of noxious weed propagating parts from one area to another.

Subd. 4. **Eradicate.** "Eradicate" means to destroy the aboveground growth and the roots of noxious weeds by a lawful method that prevents the maturation and spread of noxious weed propagating parts from one area to another.

Subd. 5. **Growing crop.** "Growing crop" means an agricultural, horticultural, or forest crop that has been planted or regularly maintained and intended for harvest.

Subd. 6. **Land.** "Land" means a parcel or tract of real estate including wetlands and public waters but not including buildings unless they are a place of business and open to the general public.

Subd. 7. **Municipality.** "Municipality" means a home rule charter or statutory city or a township.

Subd. 8. **Noxious weed.** "Noxious weed" means an annual, biennial, or perennial plant that the commissioner designates to be injurious to public health, the environment, public roads, crops, livestock, or other property.

Subd. 9. **Occupant.** "Occupant" means a person who uses land as a principal residence or who leases land or both.

Subd. 10. **Permanent pasture, hay meadow, woodlot, and other noncrop area.** "Permanent pasture, hay meadow, woodlot, and other noncrop area" means an area of predominantly native or seeded perennial plants that can be used for grazing or hay purposes but is not harvested on a regular basis and is not considered to be a growing crop.

Subd. 11. **Person.** "Person" means an individual, partnership, corporation, society, association, firm, public agency, or an agent for one of those entities.

Subd. 12. **Propagating parts.** "Propagating parts" means plant parts, including seeds, that are capable of producing new plants.

**History:** 1992 c 500 s 3

**18.78 CONTROL OR ERADICATION OF NOXIOUS WEEDS.**

Subdivision 1. **Generally.** Except as provided in section 18.85, a person owning land, a person occupying land, or a person responsible for the maintenance of public land shall control or eradicate all noxious weeds on the land at a time and in a manner ordered by the commissioner, the county agricultural inspector, or a local weed inspector.

Subd. 2. **Control of purple loosestrife.** An owner of nonfederal lands underlying public waters or wetlands designated under section 103G.201 is not required to control or eradicate purple loosestrife below the ordinary high water level of the public water or wetland. The commissioner of natural resources is responsible for control and eradication of purple loosestrife on public waters and wetlands designated under section 103G.201, except those located upon lands owned in fee title or managed by the United States. The officers, employees, agents, and contractors of the commissioner of natural resources may enter upon public waters and wetlands designated under section 103G.201 and, after providing notification to the occupant or owner of the land, may cross adjacent lands as necessary for the purpose of investigating purple loosestrife infestations, formulating methods of eradication, and implementing control and eradication of purple loosestrife. The commissioner, after consultation with the commissioner of agriculture, shall, by June 1 of each year, compile a priority list of purple loosestrife infestations to be controlled in designated public waters. The commissioner of agriculture must distribute the list to county agricultural inspectors, local weed inspectors, and their appointed agents. The commissioner of natural resources shall control listed purple loosestrife infestations in priority order within the limits of appropriations provided for that purpose. This procedure shall be the exclusive means for control of purple loosestrife on designated public waters by the commissioner of natural resources and shall supersede the other provisions for control of noxious weeds set forth elsewhere in this

chapter. The responsibility of the commissioner of natural resources to control and eradicate purple loosestrife on public waters and wetlands located on private lands and the authority to enter upon private lands ends ten days after receipt by the commissioner of a written statement from the landowner that the landowner assumes all responsibility for control and eradication of purple loosestrife under sections 18.78 to 18.88. State officers, employees, agents, and contractors of the commissioner of natural resources are not liable in a civil action for trespass committed in the discharge of their duties under this section and are not liable to anyone for damages, except for damages arising from gross negligence.

**History:** 1992 c 500 s 4

### 18.79 DUTIES OF THE COMMISSIONER.

**Subdivision 1. Enforcement.** The commissioner of agriculture shall administer and enforce sections 18.76 to 18.88.

**Subd. 2. Authorized agents.** The commissioner shall authorize department of agriculture personnel and may authorize, in writing, county agricultural inspectors to act as agents in the administration and enforcement of sections 18.76 to 18.88.

**Subd. 3. Entry upon land.** To administer and enforce sections 18.76 to 18.88, the commissioner, authorized agents of the commissioner, county agricultural inspectors, and local weed inspectors may enter upon land without consent of the owner and without being subject to an action for trespass or any damages.

**Subd. 4. Rules.** The commissioner may adopt necessary rules under chapter 14 for the proper enforcement of sections 18.76 to 18.88.

**Subd. 5. Order for control or eradication of noxious weeds.** The commissioner, a county agricultural inspector, or a local weed inspector may order the control or eradication of noxious weeds on any land within the state.

**Subd. 6. Educational programs for control or eradication of noxious weeds.** The commissioner shall conduct education programs considered necessary for weed inspectors in the enforcement of the noxious weed law. The director of the Minnesota extension service may conduct educational programs for the general public that will aid compliance with the noxious weed law.

**Subd. 7. Meetings and reports.** The commissioner shall designate by rule the reports that are required to be made and the meetings that must be attended by weed inspectors.

**Subd. 8. Prescribed forms.** The commissioner shall prescribe the forms to be used by weed inspectors in the enforcement of sections 18.76 to 18.88.

**Subd. 9. Injunction.** If the commissioner applies to a court for a temporary or permanent injunction restraining a person from violating or continuing to violate sections 18.76 to 18.88, the injunction may be issued without requiring a bond.

**Subd. 10. Prosecution.** On finding that a person has violated sections 18.76 to 18.88, the commissioner may start court proceedings in the locality in which the violation occurred. The county attorney may prosecute actions under sections 18.76 to 18.88 within the county attorney's jurisdiction.

**Subd. 11. Quarantine.** The commissioner may establish a noxious weed quarantine according to section 18.85 and may hire additional employees and purchase the necessary equipment, supplies, or services to properly carry out the eradication of noxious weeds on quarantined land.

**History:** 1986 c 444; 1992 c 500 s 5

### 18.80 INSPECTORS.

**Subdivision 1. County agricultural inspectors.** The county board shall appoint one or more county agricultural inspectors that meet the qualifications prescribed by rule. The appointment must be for a period of time which is sufficient to accomplish the duties assigned to this position. A notice of the appointment must be delivered to the commissioner within ten days of the appointment and it must establish the initial number of hours to be worked annually.

**Subd. 2. Local weed inspectors.** The supervisors of each town board and the mayor of each city shall act as local weed inspectors within their respective municipalities.

Subd. 3. **Assistant weed inspectors.** A municipality may appoint one or more assistants to act on behalf of the appointing authority as a weed inspector for the municipality. The appointed assistant or assistants have the power, authority, and responsibility of the town board members or the city mayor in the capacity of weed inspector.

**History:** 1992 c 500 s 6

### 18.81 DUTIES OF INSPECTORS.

Subdivision 1. **County agricultural inspectors.** It is the duty of county agricultural inspectors:

(1) to see that sections 18.76 to 18.88 and rules adopted under those sections are carried out within their jurisdiction;

(2) to see that sections 21.80 to 21.92 and rules adopted under those sections are carried out within their jurisdiction;

(3) to see that sections 21.71 to 21.78 and rules adopted under those sections are carried out within their jurisdiction;

(4) to participate in the control programs for feed, fertilizer, pesticide, and insect pests when requested, in writing, to do so by the commissioner;

(5) to participate in other agricultural programs under the control of the commissioner when requested to do so, subject to veto by the county board;

(6) to administer the distribution of funds allocated by the county board to the county agricultural inspector for noxious weed control and eradication within the county;

(7) to submit reports and attend meetings that the commissioner requires; and

(8) to publish a general weed notice of the legal duty to control noxious weeds in one or more legal newspapers of general circulation throughout the county.

Subd. 2. **Local weed inspectors.** Local weed inspectors shall:

(1) examine all lands, including highways, roads, alleys, and public ground in the territory over which their jurisdiction extends to ascertain if section 18.78 and related rules have been complied with;

(2) see that the control or eradication of noxious weeds is carried out in accordance with section 18.83 and related rules;

(3) issue permits in accordance with section 18.82 and related rules for the transportation of materials or equipment infested with noxious weed propagating parts; and

(4) submit reports and attend meetings that the commissioner requires.

Subd. 3. **Nonperformance by inspectors; reimbursement for expenses.** (a) If local weed inspectors neglect or fail to do their duty as prescribed in this section, the commissioner shall issue a notice to the inspector providing instructions on how and when to do their duty. If, after the time allowed in the notice, the local weed inspector has not complied as directed, the county agricultural inspector may perform the duty for the local weed inspector. A claim for the expense of doing the local weed inspector's duty is a legal charge against the municipality in which the inspector has jurisdiction. The county agricultural inspector doing the work may file an itemized statement of costs with the clerk of the municipality in which the work was performed. The municipality shall immediately issue proper warrants to the county for the work performed. If the municipality fails to issue the warrants, the county auditor may include the amount contained in the itemized statement of costs as part of the next annual tax levy in the municipality and withhold that amount from the municipality in making its next apportionment.

(b) If a county agricultural inspector fails to perform the duties as prescribed in this section, the commissioner shall issue a notice to the inspector providing instructions on how and when to do that duty.

(c) The commissioner shall by rule establish procedures to carry out the enforcement actions for nonperformance required by this subdivision.

**History:** 1992 c 500 s 7

**18.82 TRANSPORTATION OF NOXIOUS WEED PROPAGATING PARTS IN INFESTED MATERIAL OR EQUIPMENT.**

Subdivision 1. **Permits.** Except as provided in section 21.74, if a person wants to transport along a public highway materials or equipment containing the propagating parts of weeds designated as noxious by the commissioner, the person must secure a written permit for transportation of the material or equipment from a local weed inspector or county agricultural inspector. Inspectors may issue permits to persons residing or operating within their jurisdiction. If the noxious weed propagating parts are removed from materials and equipment or devitalized before being transported, a permit is not needed.

Subd. 2. **Conditions of permit issuance.** The following conditions must be met before a permit under subdivision 1 may be issued:

(1) any material or equipment containing noxious weed propagating parts that is about to be transported along a public highway must be in a container that is sufficiently tight and closed or otherwise covered to prevent the blowing or scattering of the material along the highway or on other lands or water; and

(2) the destination for unloading and the use of the material or equipment containing noxious weed propagating parts must be stated on the permit along with the method that will be used to destroy the viability of the propagating parts and thereby prevent their being dumped or scattered upon land or water.

Subd. 3. **Duration of permit; revocation.** A permit under subdivision 1 is valid for up to one year after the date it is issued unless otherwise specified by the weed inspector issuing the permit. The permit may be revoked if a county agricultural inspector or local weed inspector determines that the applicant has not complied with this section.

**History:** 1992 c 500 s 8

**18.83 CONTROLLING OR ERADICATING NOXIOUS WEEDS; NOTICES; EXPENSES.**

Subdivision 1. **General weed notice.** A general notice for noxious weed control or eradication must be published on or before May 15 of each year and at other times the commissioner directs. Failure of the county agricultural weed inspector to publish the general notice does not relieve a person from the necessity of full compliance with sections 18.76 to 18.88 and related rules. The published notice is legal and sufficient notice when an individual notice cannot be served.

Subd. 2. **Individual notice.** A weed inspector may find it necessary to secure more prompt or definite control or eradication of noxious weeds than is accomplished by the published general notice. In these special or individual instances, involving one or a limited number of persons, the weed inspector having jurisdiction shall serve individual notices in writing upon the person who owns the land and the person who occupies the land, or the person responsible for or charged with the maintenance of public land, giving specific instructions on when and how named noxious weeds are to be controlled or eradicated. Individual notices provided for in this section must be served in the same manner as a summons in a civil action in the district court or by certified mail. Service on a person living temporarily or permanently outside of the weed inspector's jurisdiction may be made by sending the notice by certified mail to the last known address of the person, to be ascertained, if necessary, from the last tax list in the county treasurer's office.

Subd. 3. **Appeal of individual notice; appeal committee.** (1) A recipient of an individual notice may appeal, in writing, the order for control or eradication of noxious weeds. This appeal must be filed with a member of the appeal committee in the county where the land is located within two working days of the time the notice is received. The committee must inspect the land specified in the notice and report back to the recipient and the inspector who issued the notice within five working days, either agreeing, disagreeing, or revising the order. The decision may be appealed in district court. If the committee agrees or revises the order, the control or eradication specified in the order, as approved or revised by the committee, may be carried out.

(2) The county board of commissioners shall appoint members of the appeal committee. The membership must include a county commissioner or municipal official and a landowner

residing in the county. The expenses of the members may be reimbursed by the county upon submission of an itemized statement to the county auditor.

**Subd. 4. Control or eradication by inspector.** If a person does not comply with an individual notice served on the person or an individual notice cannot be served, the weed inspector having jurisdiction shall have the noxious weeds controlled or eradicated within the time and in the manner the weed inspector designates.

**Subd. 5. Control or eradication by inspector in growing crop.** A weed inspector may consider it necessary to control or eradicate noxious weeds along with all or a part of a growing crop to prevent the maturation and spread of noxious weeds within the inspector's jurisdiction. If this situation exists, the weed inspector may have the noxious weeds controlled or eradicated together with the crop after the appeal committee has reviewed the matter as outlined in subdivision 3 and reported back agreement with the order.

**Subd. 6. Authorization for person hired to enter upon land.** The weed inspector may hire a person to control or eradicate noxious weeds if the person who owns the land, the person who occupies the land, or the person responsible for the maintenance of public land has failed to comply with an individual notice or with the published general notice when an individual notice cannot be served. The person hired must have authorization, in writing, from the weed inspector to enter upon the land.

**Subd. 7. Expenses; reimbursements.** A claim for the expense of controlling or eradicating noxious weeds, which may include the costs of serving notices, is a legal charge against the county in which the land is located. The officers having the work done must file with the county auditor a verified and itemized statement of cost for all services rendered on each separate tract or lot of land. The county auditor shall immediately issue proper warrants to the persons named on the statement as having rendered services. To reimburse the county for its expenditure in this regard, the county auditor shall certify the total amount due and, unless an appeal is made in accordance with section 18.84, enter it on the tax roll as a tax upon the land and it must be collected as other real estate taxes are collected.

If public land is involved, the amount due must be paid from funds provided for maintenance of the land or from the general revenue or operating fund of the agency responsible for the land. Each claim for control or eradication of noxious weeds on public lands must first be approved by the commissioner of agriculture.

**History:** 1992 c 500 s 9

## 18.84 LIABILITY; APPEALS.

**Subdivision 1. Counties and municipalities.** Counties and municipalities are not liable for damages from the noxious weed control program for actions conducted in accordance with sections 18.76 to 18.88.

**Subd. 2. Appeal to county board.** A person who is ordered to control noxious weeds under sections 18.76 to 18.88 and is charged for noxious weed control may appeal the cost of noxious weed control to the county board of the county where the noxious weed control measures were undertaken within 30 days after being charged. The county board shall determine the amount and approve the charge and filing of a lien against the property if it determines that the owner, or occupant if other than the owner, responsible for controlling noxious weeds did not comply with the order of the inspector.

**Subd. 3. Court appeal of costs; petition.** (a) A landowner who has appealed the cost of noxious weed control measures under subdivision 2 may petition for judicial review. The petition must be filed within 30 days after the conclusion of the hearing before the county board. The petition must be filed with the court administrator in the county in which the land where the noxious weed control measures were undertaken is located, together with proof of service of a copy of the petition on the commissioner and the county auditor. No responsive pleadings may be required of the commissioner or the county, and no court fees may be charged for the appearance of the commissioner or the county in this matter.

(b) The petition must be captioned in the name of the person making the petition as petitioner and the commissioner of agriculture and respective county as respondents. The petition must include the petitioner's name, the legal description of the land involved, a copy of

the notice to control noxious weeds, and the date or dates on which appealed control measures were undertaken.

(c) The petition must state with specificity the grounds upon which the petitioner seeks to avoid the imposition of a lien for the cost of noxious weed control measures.

**Subd. 4. Hearing.** (a) A hearing under subdivisions 3 to 5 must be held at the earliest practicable date, and in no event later than 90 days following the filing of the petition of objection. The hearing must be before a district judge in the county in which the land where the noxious weed control measures were undertaken is located, and must be conducted in accordance with the district court rules of civil procedure.

(b) The court shall either order that a lien representing part or all of the costs for noxious weed control measures be imposed against the land or that the landowner be relieved of responsibility for payment of noxious weed control measures undertaken.

**Subd. 5. Further appeal.** A party aggrieved by the decision of the reviewing court may appeal the decision as provided in the rules of appellate procedure.

**History:** 1992 c 500 s 10

### 18.85 NOXIOUS WEED QUARANTINE.

**Subdivision 1. Need for quarantine.** If there is an infestation of noxious weeds beyond the ability of the person who owns or occupies the land to eradicate it, the commissioner may, upon request of the person who owns the land or on the commissioner's own initiative, take necessary steps to prevent the further spread of the weed. To this end, the commissioner may quarantine a tract of land that is infested and put into operation the necessary means for the eradication of the weed; provided that the county and municipality in which the land is located must approve of the quarantine before it can be initiated.

**Subd. 2. Notice of quarantine.** The commissioner, upon entering a tract of land for the purpose of this section, shall notify in writing the persons who own or occupy the land of the entry and quarantine. If the necessary means of eradication have been completed, the commissioner shall notify, in writing, the persons who own or occupy the land that the quarantine effort is complete.

**Subd. 3. Expenses.** The expenses for eradication of noxious weeds on quarantined land must be paid by the commissioner from the funds provided for this purpose.

Counties, municipalities, and owners or occupants must reimburse the commissioner before January 1 of each year. The county shall pay 20 percent of the expenses, the municipality shall pay ten percent, and the owner or occupant shall pay ten percent.

**History:** 1992 c 500 s 11.

### 18.86 UNLAWFUL ACTS.

No person may:

(1) hinder or obstruct in any way the commissioner, the commissioner's authorized agents, county agricultural inspectors, or local weed inspectors in the performance of their duties as provided in sections 18.76 to 18.88 or related rules;

(2) neglect, fail, or refuse to comply with section 18.82 or related rules in the transportation and use of material or equipment infested with noxious weed propagating parts;

(3) sell material containing noxious weed propagating parts to a person who does not have a permit to transport that material or to a person who does not have a screenings permit issued in accordance with section 21.74; or

(4) neglect, fail, or refuse to comply with a general notice or an individual notice to control or eradicate noxious weeds.

**History:** 1992 c 500 s 12

### 18.87 PENALTY.

A violation of section 18.86 or a rule adopted under that section is a misdemeanor. County agricultural inspectors, local weed inspectors, or their appointed assistants are not subject to the penalties of this section for failure, neglect, or refusal to perform duties imposed on them by sections 18.76 to 18.88.

**History:** 1992 c 500 s 13

**18.88 NOXIOUS WEED PROGRAM FUNDING.**

Subdivision 1. **County.** The county board shall pay, from the general revenue or other fund for the county, the expenses for the county agricultural inspector position, for noxious weed control or eradication on all land owned by the county or on land that the county is responsible for the maintenance of, for the expenses of the appeal committee, and for necessary expenses as required for quarantines within the county.

Subd. 2. **Municipality.** The municipality shall pay, from the general revenue or other fund for the municipality, the necessary expenses of the local weed inspector in the performance of duties required for quarantines within the municipality, and for noxious weed control or eradication on land owned by the municipality or on land for which the municipality is responsible for its maintenance.

**History:** 1992 c 500 s 14