

Senate Bill 789

Sponsored by COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires public utility to file bond with State Department of Agriculture if commercially growing or contracting for commercial growing of *Arundo donax* L. or invasive species for use as biomass.

Imposes duties on public utility if *Arundo donax* L. or invasive species grown by or under contract with public utility migrates or spreads to property under different ownership. Allows property owner to obtain department inspection and approval of eradication or control program for migrating or spreading *Arundo donax* L. or invasive species if utility fails to carry out duties. Allows department to enter order for public utility to pay property owner costs incurred in carrying out approved program, and for loss of use or diminished value of property. Allows department to require costs not paid by public utility as ordered be paid from bond.

Makes public utility subject to civil penalty, not to exceed \$100,000, if public utility fails to carry out duties following migration or spreading of *Arundo donax* L. or invasive species. Makes violation of bond requirement subject to civil penalty not to exceed \$25,000, for each day violation continues.

A BILL FOR AN ACT

1
2 Relating to the commercial growing of plants.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) As used in this section:**

5 (a) **"Biomass" has the meaning given that term in ORS 468A.020.**

6 (b) **"Category one alternative energy device" has the meaning given that term in ORS**
7 **469B.100.**

8 (c) **"Invasive species" has the meaning given that term in ORS 570.755.**

9 (d) **"Public body" has the meaning given that term in ORS 174.109.**

10 (e) **"Public utility" has the meaning given that term in ORS 757.005.**

11 (f) **"Small scale local energy project" has the meaning given that term in ORS 470.050.**

12 (2) **A public utility must have on file with the State Department of Agriculture a valid**
13 **surety bond with one or more sureties licensed to do business in this state if the public**
14 **utility commercially grows or contracts for the commercial growing of *Arundo donax* L. or**
15 **an invasive species for use as biomass in a category one alternative energy device or small**
16 **scale local energy project.**

17 (3) **The amount of a bond required under this section must be the greater of:**

18 (a) **\$25,000 for each acre that the public utility is using or has used within the preceding**
19 **12 months for growing *Arundo donax* L. or an invasive species; or**

20 (b) **\$1,000,000.**

21 (4) **A surety bond filed as required under this section must be conditioned to provide**
22 **payment of amounts the department declares payable from the bond under subsection (8) of**
23 **this section due to migration or spreading of *Arundo donax* L. or an invasive species from**
24 **the property of the public utility that is discovered during the bond period. A bond described**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 in this section must be in effect for at least a one-year period or until depleted by payments
2 ordered by the department, unless the surety sooner cancels the bond. At the discretion of
3 the surety, that bond may be continued for an additional period by continuation certificate.
4 The public utility shall maintain a bond in force until two years after the public utility ceases
5 to use the property for growing *Arundo donax* L. or an invasive species.

6 (5) If a plant is declared after planting to be an invasive species, a public utility must
7 obtain the bond described in subsection (2) of this section no later than 30 days after the
8 plant is declared to be an invasive species.

9 (6) If *Arundo donax* L. or an invasive species migrates or spreads from a property where
10 the *Arundo donax* L. or invasive species is or was commercially grown by or under contract
11 with a public utility to a property under different ownership, upon being informed of the
12 migration or spreading the public utility shall:

13 (a) Eradicate the *Arundo donax* L. or invasive species from the property to which the
14 *Arundo donax* L. or invasive species has migrated or spread;

15 (b) Pay the property owner for any loss of use or diminished value of the property; and

16 (c) Establish a monitoring program approved by the department to prevent a recurrence
17 of the migration or spreading.

18 (7) If a public utility fails to carry out the duties of the public utility under subsection
19 (6) of this section, upon request of the property owner the department shall provide for an
20 inspection of a property and, after providing the public utility with an opportunity for hear-
21 ing, shall approve a program that the department deems appropriate for eradicating or con-
22 trolling the *Arundo donax* L. or invasive species on the property. Upon completion of the
23 department-approved program, the property owner shall provide statements of the
24 eradication or control costs to the department and the public utility. The property owner
25 may also submit evidence regarding damages from loss of use or diminished value of the
26 property.

27 (8) After allowing the public utility an opportunity for hearing, the department may enter
28 an order for the public utility to pay the amount the department determines was properly
29 incurred to carry out the department-approved eradication or control program and pay any
30 amount determined by the department for loss of use or diminished value of the property.
31 If the public utility does not pay the amount contained in the order within 30 days, the de-
32 partment may declare the amount to be payable to the property owner out of the bond pro-
33 vided by the public utility under this section.

34 (9) This section does not:

35 (a) Require a property owner to claim loss of use or diminished value of property under
36 this section or otherwise affect the right of a person or public body to bring an action in a
37 court of law for damages or other relief against a public utility;

38 (b) Prohibit a property owner or public body from performing any activity described un-
39 der ORS 570.755 or 570.810; or

40 (c) Require a property owner to obtain department inspection or approval to eradicate
41 or control a plant migrating or spreading to a property if the property owner does not seek
42 compensation under this section for the eradication or control.

43 **SECTION 2.** (1) The State Department of Agriculture may impose a civil penalty, not to
44 exceed \$100,000, on a public utility that fails to perform the duties imposed under section 1
45 (6) of this 2017 Act.

1 **(2) The department may impose a civil penalty, not to exceed \$25,000, on a public utility**
2 **that fails to comply with a bonding requirement imposed under section 1 of this 2017 Act.**
3 **Each day that a public utility continues to fail to comply with the bonding requirement is a**
4 **separate violation subject to a separate civil penalty.**

5 **SECTION 3. Sections 1 and 2 of this 2017 Act apply on or after the effective date of this**
6 **2017 Act for Arundo donax L. or invasive species planted before, on or after the effective date**
7 **of this 2017 Act.**

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