

# House Bill 2794

Sponsored by Representative HOLVEY

## 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**.

Imposes additional information requirement for notice or written plan for chemical application involving commercial application of pesticides to certain forestlands. Extends time for making comments regarding notice or written plan for pesticide application. Delays earliest time for proceeding with pesticide application following submission of written plan. Makes failure to timely file notice subject to civil penalty not to exceed \$5,000. Makes failure to comply with State Forester order to file notice or to correct notice information punishable by civil penalty not to exceed \$5,000 for each day of noncompliance.

Requires pesticide operator, governmental body, public utility or telecommunications utility making applications of pesticide to real property to give notice to State Department of Agriculture before making application. Creates exceptions. Specifies timing and content of notice. Requires department to maintain notice as public record. Makes failure to file proper notice in timely manner punishable by civil penalty not to exceed \$1,000 for first violation or \$2,000 for subsequent violation. Makes failure to comply with department order to file notice or to correct notice information punishable by civil penalty not to exceed \$1,000 for first day of noncompliance and \$2,000 for each subsequent day of noncompliance.

## A BILL FOR AN ACT

1  
2 Relating to notice of pesticide application; creating new provisions; and amending ORS 527.670,  
3 527.683, 527.700 and 527.992.

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

5 **SECTION 1. Sections 2 and 3 of this 2007 Act are added to and made a part of ORS 527.610**  
6 **to 527.770.**

7 **SECTION 2. (1) If a notice or written plan is filed under ORS 527.670 for a chemical ap-**  
8 **plication that involves the commercial application of a pesticide as defined in ORS 634.006,**  
9 **in addition to any information required under ORS 527.670 or by the State Forester, the no-**  
10 **tice or written plan must contain the following information:**

11 (a) **The property location and the size of the area to which the pesticide is to be applied.**

12 (b) **The approximate date on which the pesticide will be applied and, if known, the time**  
13 **of day.**

14 (c) **The State Department of Agriculture registration number and scientific name of the**  
15 **pesticide and the common name of the product containing the pesticide.**

16 (d) **The concentration and total amount of pesticide to be applied.**

17 (e) **The name and license number of the pesticide operator.**

18 (2) **A person may submit written comments pertaining to a chemical application de-**  
19 **scribed in subsection (1) of this section to the State Forester within 30 calendar days after**  
20 **the date on which the notice or written plan is filed with the State Forester under ORS**  
21 **527.670.**

22 (3) **If an operator, timber owner or landowner is required under ORS 527.670 to submit**  
23 **a written plan of operations to the State Forester for a chemical application described in**  
24 **subsection (1) of this section, the State Forester may provide comments concerning the**

**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 written plan not earlier than 30 calendar days nor later than 37 calendar days following the  
2 date on which the written plan was filed with the State Forester.

3 **SECTION 3.** (1) If an operator, timber owner or landowner fails to file a notice or written  
4 plan containing the information required by section 2 of this 2007 Act or fails to include in-  
5 formation or to correct inaccurate information contained in the notice or written plan, the  
6 State Forester may issue an order requiring the operator, timber owner or landowner to file  
7 a notice or written plan that meets the requirements of section 2 of this 2007 Act. Each day  
8 that the operator, timber owner or landowner fails to comply with the order is a separate  
9 violation under ORS 527.992.

10 (2) The issuance of an order under this section is in addition to any other action available  
11 to the State Forester for a violation.

12 **SECTION 4.** ORS 527.670 is amended to read:

13 527.670. (1) The State Board of Forestry shall designate the types of operations for which notice  
14 shall be required under this section.

15 (2) The board shall determine by rule what types of operations require a written plan.

16 (3) The board's determination under subsection (2) of this section shall require a written plan  
17 for operations:

18 (a) Within one hundred feet of a stream determined by the State Forester to be used by fish or  
19 for domestic use, unless the board, by rule, provides that a written plan is not required because the  
20 proposed operation will be conducted according to a general vegetation retention prescription de-  
21 scribed in administrative rule; or

22 (b) Within three hundred feet of a resource site inventoried pursuant to ORS 527.710 (3)(a).

23 (4) The distances set forth in subsection (3)(a) and (b) of this section are solely for the purpose  
24 of defining an area within which a hearing may be requested under ORS 527.700 and not the area  
25 to be protected by the board's rules adopted pursuant to ORS 527.710 (3)(c).

26 (5) For the purpose of determining the distances set forth in subsection (3)(a) and (b) of this  
27 section "site" means the specific resource site and not any additional buffer area.

28 (6) An operator, timber owner or landowner, before commencing an operation, shall notify the  
29 State Forester. The notification shall be on forms provided by the State Forester and shall include  
30 the name and address of the operator, timber owner and landowner, the legal description of the  
31 operating area, and any other information considered by the State Forester to be necessary for the  
32 administration of the rules promulgated by the board pursuant to ORS 527.710. Promptly upon re-  
33 ceipt of such notice, the State Forester shall send a copy of the notice to whichever of the operator,  
34 timber owner or landowner did not submit the notification. The State Forester shall send a copy of  
35 notices involving chemical applications to persons within 10 miles of the chemical application who  
36 hold downstream surface water rights pursuant to ORS chapter 537, if such a person has requested  
37 that notification in writing. The board shall adopt rules specifying the information to be contained  
38 in the notice. All information filed with the State Forester pertaining to chemical applications shall  
39 be public record.

40 (7) An operator, timber owner or landowner, whichever filed the original notification, shall no-  
41 tify the State Forester of any subsequent change in the information contained in the notification.

42 (8) Within three working days of receipt of a notice or a written plan filed under subsection (6)  
43 or (7) of this section, the State Forester shall send a copy of the notice or written plan to any person  
44 who requested of the State Forester in writing that the person be sent copies of notice and written  
45 plan and who has paid any applicable fee established by the State Forester for such service. The

1 State Forester may establish a fee for sending copies of notices and written plans under this sub-  
 2 section not to exceed the actual and reasonable costs. In addition, the State Forester shall send a  
 3 copy of the notification to the Department of Revenue and the county assessor for the county in  
 4 which the operation is located, at times and in a manner determined through written cooperative  
 5 agreement by the parties involved.

6 (9) **Except as provided in section 2 of this 2007 Act**, persons may submit written comments  
 7 pertaining to the operation to the State Forester within 14 calendar days of the date the notice or  
 8 written plan was filed with the State Forester under subsection (2), (6) or (7) of this section.  
 9 Notwithstanding the provisions of this subsection, the State Forester may waive any waiting period  
 10 for operations not requiring a written plan under subsection (3) of this section, except those oper-  
 11 ations involving aerial application of chemicals.

12 (10) If an operator, timber owner or landowner is required to submit a written plan of operations  
 13 to the State Forester under subsection (3) of this section:

14 (a) The State Forester shall review a written plan and may provide comments to the person who  
 15 submitted the written plan;

16 (b) **Except as provided in section 2 of this 2007 Act**, the State Forester may not provide any  
 17 comments concerning the written plan earlier than 14 calendar days following the date that the  
 18 written plan was filed with the State Forester nor later than 21 calendar days following the date  
 19 that the written plan was filed; *[and]*

20 (c) *[Provided that]* **If** notice has been provided as required by subsection (6) of this section, **ex-**  
 21 **cept as provided in paragraph (d) of this subsection**, the operation may commence on the date  
 22 that the State Forester provides comments or, if no comments are provided within the time period  
 23 established in paragraph (b) of this subsection, at any time after 21 calendar days following the date  
 24 that the written plan was filed[.]; **and**

25 **(d) If the notice is subject to section 2 of this 2007 Act, the operation may commence on**  
 26 **the date on which the State Forester provides comments under section 2 (3) of this 2007 Act**  
 27 **or, if no comments are provided within the time period established in section 2 (3) of this**  
 28 **2007 Act, at any time later than 37 calendar days following the date that the written plan**  
 29 **was filed.**

30 (11)(a) Comments provided by the State Forester, or by the board under ORS 527.700 (6), to the  
 31 person who submitted the written plan are for the sole purpose of providing advice to the operator,  
 32 timber owner or landowner regarding whether the operation described in the written plan is likely  
 33 to comply with ORS 527.610 to 527.770 and rules adopted thereunder. Comments provided by the  
 34 State Forester or the board do not constitute an approval of the written plan or operation.

35 (b) If the State Forester or the board does not comment on a written plan, the failure to com-  
 36 ment does not mean that an operation carried out in conformance with the written plan complies  
 37 with ORS 527.610 to 527.770 or rules adopted thereunder nor does the failure to comment constitute  
 38 a rejection of the written plan or operation.

39 (c) In the event that the State Forester or board determines that an enforcement action may be  
 40 appropriate concerning the compliance of a particular operation with ORS 527.610 to 527.770 or  
 41 rules adopted thereunder, the State Forester or board shall consider, but are not bound by, com-  
 42 ments that the State Forester provided under this section or comments that the board provided un-  
 43 der ORS 527.700.

44 (12) When the operation is required to have a written plan under subsection (3) of this section  
 45 and comments have been timely filed under subsection (9) of this section pertaining to the operation

1 requiring a written plan, the State Forester shall:

2 (a) Send a copy of the State Forester's review and comments, if any, to persons who submitted  
3 timely written comments under subsection (9) of this section pertaining to the operation; and

4 (b) Send to the operator, timber owner and landowner a copy of all timely comments submitted  
5 under subsection (9) of this section.

6 **SECTION 5.** ORS 527.683 is amended to read:

7 527.683. (1) [No] A civil penalty prescribed in ORS 527.992 [shall] **may not** be imposed until the  
8 person incurring the penalty has received notice in writing from the State Forester specifying the  
9 violation. Such notice is in addition to the notice required in ORS 183.745.

10 (2) [The] A citation issued pursuant to ORS 527.680 (1), **an [and the]** order issued pursuant to  
11 ORS 527.680 (2)(b) **or an order issued under section 3 of this 2007 Act** shall each constitute the  
12 notice required by subsection (1) of this section.

13 **SECTION 6.** ORS 527.700 is amended to read:

14 527.700. (1) Any operator, timber owner or landowner affected by any finding or order of the  
15 State Forester issued under ORS 527.610 to 527.770 and 527.992 may request a hearing within 30  
16 days after issuance of the order. The hearing shall be commenced within 14 days after receipt of the  
17 request for hearing and a final order shall be issued within 28 days of the request for the hearing  
18 unless all parties agree to an extension of the time limit.

19 (2) The State Board of Forestry may delegate to the administrative law judge the authority to  
20 issue final orders on matters under this section. Hearings provided under this section shall be con-  
21 ducted as contested case hearings under ORS 183.413 to 183.470. The board may establish such rules  
22 as it deems appropriate to carry out the provisions of this section. Appeals from final hearing orders  
23 under this section shall be provided in ORS 183.482, except that the comments of the board or the  
24 State Forester concerning a written plan are not reviewable orders under ORS 183.480.

25 (3) Any person adversely affected or aggrieved by an operation described in subsection (4) of  
26 this section may file a written request to the board for a hearing if the person submitted written  
27 comments pertaining to the operation within the time limits established under ORS 527.670 (9) **or**  
28 **section 2 (2) of this 2007 Act.**

29 (4) A request for hearing may be filed under subsection (3) of this section only if a written plan  
30 was required pursuant to ORS 527.670 (3).

31 (5) A request for hearing filed under subsection (3) of this section shall be filed within 14 cal-  
32 endar days of the date the State Forester completed review of the written plan and issued any  
33 comments. Copies of the complete request shall be served, within the 14-day period, on the operator,  
34 timber owner and landowner. The request shall include:

35 (a) A copy of the written plan on which the person is requesting a hearing;

36 (b) A copy of the comments pertaining to the operation that were filed by the person requesting  
37 the hearing;

38 (c) A statement that shows the person is adversely affected or aggrieved by the operation and  
39 has an interest which is addressed by the Oregon Forest Practices Act or rules adopted thereunder;  
40 and

41 (d) A statement of facts that establishes that the operation is of the type described in ORS  
42 527.670 (3).

43 (6) If the board finds that the person making the request meets the requirement of subsection  
44 (5)(c) of this section, the board shall set the matter for hearing within 21 calendar days after receipt  
45 of the request for hearing. The operator, timber owner and landowner shall be allowable parties to

1 the hearing. The person requesting the hearing may raise, in the hearing, only those issues that the  
 2 person raised in written comments filed under ORS 527.670 (9) **or section 2 (2) of this 2007 Act**  
 3 relating to conformity with the rules of the board. The board shall issue its own comments, which  
 4 may affirm, modify or rescind comments of the State Forester, if any, on the written plan within 45  
 5 days after the request for hearing was filed, unless all parties agree to an extension of the time  
 6 limit. The comments of the board or of the State Forester concerning a written plan are not re-  
 7 viewable orders under ORS 183.480.

8 (7) The board may award reasonable attorney fees and expenses to each of the prevailing parties  
 9 against any other party who the board finds presented a position without probable cause to believe  
 10 the position was well-founded, or made a request primarily for a purpose other than to secure ap-  
 11 propriate action by the board.

12 (8)(a) Upon the written request of a person requesting a hearing under subsection (3) of this  
 13 section, a stay of the operation subject to the hearing may be granted upon a showing that:

14 (A) Commencement or continuation of the operation will constitute a violation of the rules of  
 15 the board;

16 (B) The person requesting the stay will suffer irreparable injury if the stay is not granted; and

17 (C) The requirements of subsections (3), (4) and (5) of this section are met.

18 (b) If the board grants the stay, it shall require the person requesting the stay to give an  
 19 undertaking which may be in the amount of the damages potentially resulting from the stay, but in  
 20 any event shall not be less than \$15,000. The board may impose other reasonable requirements per-  
 21 taining to the grant of the stay. The board shall limit the effect of the stay to the specific ge-  
 22 ographic area or elements of the operation for which the person requesting the stay has  
 23 demonstrated a violation of the rules and irreparable injury under paragraph (a) of this subsection.

24 (c) If the board determines in its comments that the written plan pertaining to the operation for  
 25 which the stay was granted is likely to result in compliance with ORS 527.610 to 527.770 or the rules  
 26 of the board, the board may award reasonable attorney fees and actual damages in favor of each  
 27 of the prevailing parties, to the extent incurred by each, against the person requesting the stay.

28 (9) If the board rescinds or modifies the comments on the written plan as submitted by the State  
 29 Forester pertaining to any operation, the board may award reasonable attorney fees and costs  
 30 against the state in favor of each of the prevailing parties.

31 (10) As used in this section, "person" means any individual, partnership, corporation, associ-  
 32 ation, governmental subdivision or public or private organization of any character.

33 **SECTION 7.** ORS 527.992 is amended to read:

34 527.992. (1) In addition to any other penalty provided by law, any person who fails to comply  
 35 with any of the following may incur a civil penalty in the amount adopted under ORS 527.685:

36 (a) The requirements of ORS 527.670, 527.676, 527.740, 527.750 or 527.755 **or section 2 of this**  
 37 **2007 Act.**

38 (b) The terms or conditions of any order of the State Forester issued in accordance with ORS  
 39 527.680 **or section 3 of this 2007 Act.**

40 (c) Any rule or standard of the State Board of Forestry adopted or issued pursuant to ORS  
 41 527.710.

42 (d) Any term or condition of a written waiver, or prior approval granted by the State Forester  
 43 pursuant to the rules adopted under ORS 527.710.

44 (2) Imposition or payment of a civil penalty under this section shall not be a bar to actions al-  
 45 leging trespass under ORS 105.810, nor to actions under ORS 161.635 or 161.655 seeking to recover

1 an amount based on the gain resulting from individual or corporate criminal violations.

2 **SECTION 8.** Sections 9 and 10 of this 2007 Act are added to and made a part of ORS  
3 chapter 634.

4 **SECTION 9.** (1) A pesticide operator making a commercial application of a pesticide to  
5 real property, or a governmental body, public utility or telecommunications utility making  
6 an application of a pesticide to real property described in ORS 634.116 (12), shall file a notice  
7 with the State Department of Agriculture at least 30 days before making the application. The  
8 notice must contain, at a minimum, the following information:

9 (a) The property location and the size of the area to which the pesticide is to be applied.

10 (b) The approximate date on which the pesticide will be applied and, if known, the time  
11 of day.

12 (c) The department registration number and scientific name of the pesticide and the  
13 common name of the product containing the pesticide.

14 (d) The concentration and total amount of pesticide to be applied.

15 (e)(A) The name and license number of the pesticide operator; or

16 (B) The name of the governmental body, public utility or telecommunications utility  
17 making the application and the name of the governmental body, public utility or telecom-  
18 munications utility owning, possessing, controlling or exercising jurisdiction over the prop-  
19 erty.

20 (2) Subsection (1) of this section does not apply to a pesticide application:

21 (a) For the purpose of abating a public nuisance described under ORS 570.170;

22 (b) Inside a structure;

23 (c) To property for which a notice or written plan is filed under ORS 527.670; or

24 (d) Ordered by a county health department or a court for the purpose of responding to  
25 an emergency affecting the public health and safety.

26 (3) The department shall maintain a notice filed under this section as a public record  
27 available for inspection by the public.

28 (4) This section does not create any new cause of action, enlarge any existing cause of  
29 action or create any private right of any person.

30 **SECTION 10.** If a person fails to file a notice required under section 9 of this 2007 Act  
31 with the State Department of Agriculture, fails to include information required in the notice  
32 or fails to correct inaccurate information contained in the notice, the department may order  
33 the person to file a notice that meets the requirements of section 9 of this 2007 Act. Failure  
34 to comply with an order issued under this section is a violation involving pesticide application  
35 for purposes of ORS 634.900. Each day that a person fails to comply with the order is a sep-  
36 arate violation.

37 **SECTION 11.** (1) Sections 2 and 3 of this 2007 Act and the amendments to ORS 527.670,  
38 527.683, 527.700 and 527.992 by sections 4 to 7 of this 2007 Act apply to chemical applications  
39 made on or after the 37th day following the effective date of this 2007 Act.

40 (2) Sections 9 and 10 of this 2007 Act apply to pesticide applications made on or after the  
41 30th day following the effective date of this 2007 Act.

42