

House Bill 2978

Sponsored by Representative HOLVEY, Senator WALKER

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**.

Restricts spraying of pesticides near park, school property, child care facility, urban growth boundary or privately owned property. Punishes violation by maximum of \$1,000 fine, one year's imprisonment, or both for first offense and maximum of \$2,000 fine, one year's imprisonment, or both for second offense.

Changes criteria for submitting written plan for forestland operations involving pesticide applications.

A BILL FOR AN ACT

1
2 Relating to areas near pesticide application sites; creating new provisions; and amending ORS
3 526.770, 527.670 and 527.700.

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

5 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 634.**

6 **SECTION 2. (1) As used in this section:**

7 (a) "Child care facility" has the meaning given that term in ORS 657A.250.

8 (b) "Park" means publicly owned land on which improvements have been made and that
9 is designated by the government owning the land as being primarily for recreational use.

10 (c) "School" means a public educational institution offering instruction at any level from
11 prekindergarten through grade 12, or the equivalent, or any part of that instruction.

12 (d) "School property" means school buildings and appurtenant structures, parking lots,
13 lawns, playgrounds, sports fields and other school-related facilities and areas.

14 (e) "Urban growth boundary" has the meaning given that term in ORS 195.060.

15 (2) A pesticide applicator, pesticide trainee, public applicator or public trainee may not:

16 (a) Apply a pesticide by aerial spraying within 1.5 miles of a park, school property, child
17 care facility, urban growth boundary or privately owned property without written permission
18 of the owner or lawful possessor of each property described in this subsection that is within
19 1.5 miles of the pesticide application site.

20 (b) Apply a pesticide by power-driven pesticide application equipment to roadside property
21 within one-half mile of a park, school property or child care facility without written per-
22 mission of the owner or lawful possessor of each property described in this subsection that
23 is within one-half mile of the pesticide application site.

24 (3) The governing body of a city, county or other local jurisdiction may grant exemptions
25 from subsection (2) of this section for a specific application of pesticides when the governing
26 body deems the application necessary to respond to a public health or safety emergency.

27 (4) The Attorney General, a district attorney, the Director of Agriculture or the State
28 Forester may bring an action for injunctive relief to prevent a violation of this section.

29 **SECTION 3. ORS 527.670 is amended to read:**

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.

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

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

4 (3) The board's determination under subsection (2) of this section shall require a written plan
5 for operations **that do not involve pesticide application:**

6 (a) Within [*one hundred*] **100** feet of a stream determined by the State Forester to be used by fish
7 or for domestic use, unless the board, by rule, provides that a written plan is not required because
8 the proposed operation will be conducted according to a general vegetation retention prescription
9 described in administrative rule; or

10 (b) Within [*three hundred*] **300** feet of a resource site inventoried pursuant to ORS 527.710 (3)(a).

11 **(4) The board's determination under subsection (2) of this section shall require a written**
12 **plan for operations that involve pesticide application:**

13 **(a) Within 1,000 feet of a river, lake, stream or wetland; or**

14 **(b) Except as provided in paragraph (a) of this subsection, within 300 feet of a resource**
15 **site inventoried pursuant to ORS 527.710 (3)(a).**

16 [(4)] **(5)** The distances set forth in [*subsection (3)(a) and (b)*] **subsections (3) and (4)** of this
17 section are solely for the purpose of defining an area within which a hearing may be requested un-
18 der ORS 527.700 and not the area to be protected by the board's rules adopted pursuant to ORS
19 527.710 (3)(c).

20 [(5)] **(6)** For the purpose of determining the distances set forth in [*subsection (3)(a) and (b)*]
21 **subsections (3) and (4)** of this section "site" means the specific resource site and not any additional
22 buffer area.

23 [(6)] **(7)** An operator, timber owner or landowner, before commencing an operation, shall notify
24 the State Forester. The notification shall be on forms provided by the State Forester and shall in-
25 clude the name and address of the operator, timber owner and landowner, the legal description of
26 the operating area, and any other information considered by the State Forester to be necessary for
27 the administration of the rules promulgated by the board pursuant to ORS 527.710. Promptly upon
28 receipt of such notice, the State Forester shall send a copy of the notice to whichever of the oper-
29 ator, timber owner or landowner did not submit the notification. The State Forester shall send a
30 copy of notices involving chemical applications to persons within 10 miles of the chemical applica-
31 tion who hold downstream surface water rights pursuant to ORS chapter 537, if such a person has
32 requested that notification in writing. The board shall adopt rules specifying the information to be
33 contained in the notice. All information filed with the State Forester pertaining to chemical appli-
34 cations shall be public record.

35 [(7)] **(8)** An operator, timber owner or landowner, whichever filed the original notification, shall
36 notify the State Forester of any subsequent change in the information contained in the notification.

37 [(8)] **(9)** Within three working days of receipt of a notice or a written plan filed under subsection
38 [(6) or] (7) **or (8)** of this section, the State Forester shall send a copy of the notice or written plan
39 to any person who requested of the State Forester in writing that the person be sent copies of notice
40 and written plan and who has paid any applicable fee established by the State Forester for such
41 service. The State Forester may establish a fee for sending copies of notices and written plans under
42 this subsection not to exceed the actual and reasonable costs. In addition, the State Forester shall
43 send a copy of the notification to the Department of Revenue and the county assessor for the county
44 in which the operation is located, at times and in a manner determined through written cooperative
45 agreement by the parties involved.

1 [(9)] (10) Persons may submit written comments pertaining to the operation to the State Forester
 2 within 14 calendar days of the date the notice or written plan was filed with the State Forester
 3 under subsection (2), [(6) or] (7) **or** (8) of this section. Notwithstanding the provisions of this sub-
 4 section, the State Forester may waive any waiting period for operations not requiring a written plan
 5 under subsection (3) **or** (4) of this section, except those operations involving aerial application of
 6 chemicals.

7 [(10)] (11) If an operator, timber owner or landowner is required to submit a written plan of
 8 operations to the State Forester under subsection (3) **or** (4) of this section:

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

11 (b) The State Forester may not provide any comments concerning the written plan earlier than
 12 14 calendar days following the date that the written plan was filed with the State Forester nor later
 13 than 21 calendar days following the date that the written plan was filed; and

14 (c) Provided that notice has been provided as required by subsection [(6)] (7) of this section, the
 15 operation may commence on the date that the State Forester provides comments or, if no comments
 16 are provided within the time period established in paragraph (b) of this subsection, at any time after
 17 21 calendar days following the date that the written plan was filed.

18 [(11)(a)] (12)(a) Comments provided by the State Forester, or by the board under ORS 527.700
 19 (6), to the person who submitted the written plan are for the sole purpose of providing advice to the
 20 operator, timber owner or landowner regarding whether the operation described in the written plan
 21 is likely to comply with ORS 527.610 to 527.770 and rules adopted thereunder. Comments provided
 22 by the State Forester or the board do not constitute an approval of the written plan or operation.

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

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

32 [(12)] (13) When the operation is required to have a written plan under subsection (3) of this
 33 section and comments have been timely filed under subsection [(9)] (10) of this section pertaining
 34 to the operation requiring a written plan, the State Forester shall:

35 (a) Send a copy of the State Forester's review and comments, if any, to persons who submitted
 36 timely written comments under subsection [(9)] (10) of this section pertaining to the operation; and

37 (b) Send to the operator, timber owner and landowner a copy of all timely comments submitted
 38 under subsection [(9)] (10) of this section.

39 **SECTION 4.** ORS 526.770 is amended to read:

40 526.770. (1) No harvest or removal of forest products on forestland covered by a contract be-
 41 tween the forest landowner and the Forest Resource Trust shall occur without the landowner or the
 42 timber owner first notifying the State Forester in writing, on forms prepared by the State Forester,
 43 of intent to harvest or remove forest products. Notice shall be made in the same manner as notice
 44 provided under ORS 527.670 [(6)] (7).

45 (2) The notification shall specify where and when the harvest or removal of forest products will

1 take place, the nature of the harvest or removal of forest products and where and to whom the
2 forest products will be sold or delivered and shall include maps or other information as required by
3 the State Forester. Upon receipt of notification pursuant to subsection (1) of this section, the State
4 Forester shall notify the landowner, and any person to whom the forest products will be sold or
5 delivered, of the repayment obligation specified in any contract between the forest landowner and
6 the State Forester. The landowner shall make payment to the State Forester. Such payment shall
7 be deposited in the Forest Resource Trust Fund. If payment is not made within 60 days of harvest
8 or removal of forest products, the lien shall be delinquent and may be foreclosed in the manner de-
9 scribed in ORS 526.755.

10 **SECTION 5.** ORS 527.700 is amended to read:

11 527.700. (1) Any operator, timber owner or landowner affected by any finding or order of the
12 State Forester issued under ORS 527.610 to 527.770 and 527.992 may request a hearing within 30
13 days after issuance of the order. The hearing shall be commenced within 14 days after receipt of the
14 request for hearing and a final order shall be issued within 28 days of the request for the hearing
15 unless all parties agree to an extension of the time limit.

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

22 (3) Any person adversely affected or aggrieved by an operation described in subsection (4) of
23 this section may file a written request to the board for a hearing if the person submitted written
24 comments pertaining to the operation within the time limits established under ORS 527.670 [(9)]
25 **(10)**.

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

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

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

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

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

38 (d) A statement of facts that establishes that the operation is of the type described in ORS
39 527.670 (3) **or** (4).

40 (6) If the board finds that the person making the request meets the requirement of subsection
41 (5)(c) of this section, the board shall set the matter for hearing within 21 calendar days after receipt
42 of the request for hearing. The operator, timber owner and landowner shall be allowable parties to
43 the hearing. The person requesting the hearing may raise, in the hearing, only those issues that the
44 person raised in written comments filed under ORS 527.670 [(9)] **(10)** relating to conformity with the
45 rules of the board. The board shall issue its own comments, which may affirm, modify or rescind

1 comments of the State Forester, if any, on the written plan within 45 days after the request for
 2 hearing was filed, unless all parties agree to an extension of the time limit. The comments of the
 3 board or of the State Forester concerning a written plan are not reviewable orders under ORS
 4 183.480.

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

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

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

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

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

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

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

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

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

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