

# D R A F T

## SUMMARY

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

Relating to the commercial growing of plants.

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

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

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

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

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

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

1 (e) “Public utility” has the meaning given that term in ORS 757.005.

2 (f) “Small scale local energy project” has the meaning given that  
3 term in ORS 470.050.

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

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

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

15 (b) \$1,000,000.

16 (4) A surety bond filed as required under this section must be con-  
17 ditioned to provide payment of amounts the department declares pay-  
18 able from the bond under subsection (8) of this section due to  
19 migration or spreading of *Arundo donax* L. or an invasive species from  
20 the property of the public utility that is discovered during the bond  
21 period. A bond described in this section must be in effect for at least  
22 a one-year period or until depleted by payments ordered by the de-  
23 partment, unless the surety sooner cancels the bond. At the discretion  
24 of the surety, that bond may be continued for an additional period by  
25 continuation certificate. The public utility shall maintain a bond in  
26 force until two years after the public utility ceases to use the property  
27 for growing *Arundo donax* L. or an invasive species.

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

1       **(6) If *Arundo donax* L. or an invasive species migrates or spreads**  
2 **from a property where the *Arundo donax* or invasive species is or was**  
3 **commercially grown by or under contract with a public utility to a**  
4 **property under different ownership, upon being informed of the mi-**  
5 **gration or spreading the public utility shall:**

6       **(a) Eradicate the *Arundo donax* L. or invasive species from the**  
7 **property to which the *Arundo donax* L. or invasive species has mi-**  
8 **grated or spread;**

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

11       **(c) Establish a monitoring program approved by the department to**  
12 **prevent a recurrence of the migration or spreading.**

13       **(7) If a public utility fails to carry out the duties of the public**  
14 **utility under subsection (6) of this section, upon request of the prop-**  
15 **erty owner the department shall provide for an inspection of a prop-**  
16 **erty and, after providing the public utility with an opportunity for**  
17 **hearing, shall approve a program that the department deems appro-**  
18 **priate for eradicating or controlling the *Arundo donax* L. or invasive**  
19 **species on the property. Upon completion of the department-approved**  
20 **program, the property owner shall provide statements of the**  
21 **eradication or control costs to the department and the public utility.**  
22 **The property owner may also submit evidence regarding damages from**  
23 **loss of use or diminished value of the property.**

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

1 by the public utility under this section.

2 (9) This section does not:

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

7 (b) Prohibit a property owner or public body from performing any  
8 activity described under ORS 570.755 or 570.810; or

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

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

16 (2) The department may impose a civil penalty, not to exceed  
17 \$25,000, on a public utility that fails to comply with a bonding re-  
18 quirement imposed under section 1 of this 2017 Act. Each day that a  
19 public utility continues to fail to comply with the bonding requirement  
20 is a separate violation subject to a separate civil penalty.

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

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