

A-Engrossed
House Bill 2289

Ordered by the House April 29
Including House Amendments dated April 29

Sponsored by Representative CLEM; Representatives CATE, EVANS, ZIKA (Presession filed.)

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.

[Directs Housing and Community Services Department to study issues relating to building in areas affected by wildfires and report to appropriate committee or interim committee of Legislative Assembly on or before September 15, 2022.]

Establishes alternative process for alteration, restoration or replacement of certain uses affected by 2020 wildfires. Expands eligibility to repair or replace subsurface sewage disposal system for dwellings approved under alternative process.

Sunset *[December 31, 2022]* **January 2, 2031.**

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to building in areas affected by wildfires; and declaring an emergency.

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

4 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 197.**

5 **SECTION 2. (1) This section applies only to owners of properties on which structures or**
6 **uses were destroyed or interrupted by a wildfire that was identified in an executive order**
7 **issued by the Governor in accordance with the Emergency Conflagration Act under ORS**
8 **476.510 to 476.610 between August 1 and September 30, 2020. The local government may alter,**
9 **restore or replace such a use as provided in this section in lieu of another process.**

10 **(2) A property owner may alter, restore or replace a nonresidential use without further**
11 **application with the local government if:**

12 **(a) The use was allowed outright as an accessory use, without regard to whether the**
13 **primary use was destroyed or was or will be restored;**

14 **(b)(A) The use was subject to a land use process; and**

15 **(B) A permit, including a conditional permit, was issued for the use notwithstanding any**
16 **expiration of the permit or any subsequent changes to the law or process; or**

17 **(c)(A) The use was established before a requirement that the use be subject to a land use**
18 **process; and**

19 **(B) The replacement use conforms as nearly as practicable to records of the use with the**
20 **county assessor, building permit information or other reliable records.**

21 **(3) The local government shall approve an application to alter, restore or replace a**
22 **dwelling if the local government determines that the evidence in the record establishes that:**

23 **(a) The former dwelling:**

24 **(A) Had intact exterior walls and roof structure;**

25 **(B) Had indoor plumbing consisting of a kitchen sink, toilet and bathing facilities con-**

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 needed to a sanitary waste disposal system;

2 (C) Had interior wiring for interior lights;

3 (D) Had a heating system; and

4 (E)(i) Was authorized by building permits or other regulatory approval process by the
5 appropriate authority; or

6 (ii) Was assessed as a residential dwelling for purposes of ad valorem taxation for the tax
7 year beginning July 1, 2001, and is not subject to unresolved enforcement proceedings ques-
8 tioning the lawfulness of the dwelling; and

9 (b) The proposed dwelling will:

10 (A) Not exceed the floor area of the destroyed dwelling by more than 10 percent;

11 (B) Be adequately served by water, sanitation and roads;

12 (C) Be located wholly or partially within the footprint of the destroyed dwelling unless
13 the applicant chooses a different location within the same lot or parcel to comply with local
14 flood regulations or to avoid a natural hazard area; and

15 (D) Comply with applicable building codes that were in effect on the later of:

16 (i) January 1, 2008; or

17 (ii) The date of the former dwelling's construction.

18 (4) A local government may not add conditions to the approval or siting of a dwelling
19 under subsection (3) of this section except as necessary to maintain participation in the Na-
20 tional Flood Insurance Program under 42 U.S.C. 4001 et seq.

21 (5) A local government may delegate the approval of an application under subsection (3)
22 of this section to:

23 (a) A hearings officer, as defined in ORS 215.402 or 227.160;

24 (b) A planning commission, as described in ORS 215.020; or

25 (c) A building official, as defined in ORS 455.715.

26 (6) The findings of the local government or its designee in approving an application under
27 subsection (3) of this section is not a land use decision. The local government may not re-
28 quire an applicant give notice to any nonparty. The findings and conclusions of the local
29 government are entitled to deference if there is any evidence to support the findings and are
30 subject to review only under ORS 34.010 to 34.100.

31 (7) If a local government determines based on the evidence in the record that the use
32 legally existed, the local government may, through a land use decision, approve an applica-
33 tion to alter, restore or replace a use for which a land use application, building permit or
34 other regulatory approval was required but record of the approval is unavailable for:

35 (a) A dwelling built after January 1, 2001, that complies with subsection (3)(a)(A) to (D)
36 and (b) of this section; or

37 (b) A nonresidential use or structure.

38 (8) An application under this section must be filed on or before September 30, 2025.

39 (9) An approval of an application under this section expires only if the property owner
40 has not commenced development of the structure or use on or before December 30, 2030.

41 **SECTION 3.** Section 4 of this 2021 Act is added to and made a part of ORS 454.605 to
42 454.755.

43 **SECTION 4.** (1) Notwithstanding ORS 454.655 (4), the Department of Environmental
44 Quality shall issue a decision on a permit to repair or replace a subsurface sewage disposal
45 system that serves a dwelling approved under section 2 of this 2021 Act without regard to

1 availability of a community or area-wide sewerage system.

2 (2) Notwithstanding ORS 197.180, the department shall issue a decision on a permit to
3 repair or replace a subsurface sewage disposal system that serves a dwelling approved under
4 section 2 of this 2021 Act without regard to whether a local government has issued a land
5 use compatibility statement for the dwelling.

6 (3) The department shall approve a permit to repair or replace a subsurface sewage dis-
7 posal system that serves a dwelling approved under section 2 of this 2021 Act if:

8 (a) A subsurface sewage disposal system served the dwelling on July 30, 2020; and

9 (b) Issuance of the permit and operation of the system would not result in pollution of
10 surface waters of the state or result in pollution of ground water that would threaten public
11 health or other beneficial uses of ground water.

12 (4) This section does not apply to a permit for a dwelling for which the owner received
13 financial assistance from the state or federal government for the repair or replacement of
14 the subsurface sewage disposal system.

15 (5) This section does not affect the authority of the department or the Environmental
16 Quality Commission to grant a variance or an exemption for a subsurface sewage disposal
17 system for a dwelling or other use.

18 **SECTION 5.** Sections 2 and 4 of this 2021 Act are repealed on January 2, 2031.

19 **SECTION 6.** This 2021 Act being necessary for the immediate preservation of the public
20 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect
21 on its passage.

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