

HB 2289-1
(LC 2170)
3/25/21 (RLM/ps)

Requested by HOUSE SPECIAL COMMITTEE ON WILDFIRE RECOVERY (at the request of Representative Brian Clem)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2289**

1 Delete lines 4 through 8 of the printed bill and insert:

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

4 **“SECTION 2. (1) This section applies only to owners of properties**
5 **on which structures or uses were destroyed or interrupted by a wildfire**
6 **that was identified in an executive order issued by the Governor in**
7 **accordance with the Emergency Conflagration Act under ORS 476.510**
8 **to 476.610 between August 1 and September 31, 2020. The local govern-**
9 **ment may alter, restore or replace such a use as provided in this sec-**
10 **tion in lieu of another process.**

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

13 **“(a) The use was allowed outright as an accessory use, without re-**
14 **gard to whether the primary use was destroyed or was or will be re-**
15 **stored;**

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

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

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

1 **“(B) The replacement use conforms as nearly as practicable to re-**
2 **ords of the use with the county assessor, building permit information**
3 **or other reliable records.**

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

7 **“(a) The former dwelling:**

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

9 **“(B) Had indoor plumbing consisting of a kitchen sink, toilet and**
10 **bathing facilities connected to a sanitary waste disposal system;**

11 **“(C) Had interior wiring for interior lights;**

12 **“(D) Had a heating system; and**

13 **“(E)(i) Was authorized by building permits or other regulatory ap-**
14 **proval process by the appropriate authority; or**

15 **“(ii) Was assessed as a residential dwelling for purposes of ad**
16 **valorem taxation for the tax year beginning July 1, 2001, and is not**
17 **subject to unresolved enforcement proceedings questioning the**
18 **lawfulness of the dwelling; and**

19 **“(b) The proposed replacement dwelling will:**

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

22 **“(B) Be adequately served by water, sanitation and roads;**

23 **“(C) Be located wholly or partially within the footprint of the de-**
24 **stroyed dwelling unless the applicant chooses a different location**
25 **within the same lot or parcel to comply with local flood regulations**
26 **or to avoid a natural hazard area; and**

27 **“(D) Comply with applicable building codes that were in effect on**
28 **the later of:**

29 **“(i) January 1, 2008; or**

30 **“(ii) The date of the former dwelling’s construction.**

1 “(4) A local government may add conditions to the approval or sit-
2 ing of a dwelling under subsection (3) of this section only as necessary
3 to maintain participation in the National Flood Insurance Program
4 under 42 U.S.C. 4001 et seq.

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

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

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

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

10 “(6) The findings of the local government or its designee in ap-
11 proving an application under subsection (3) of this section is not a land
12 use decision. The local government may not require an applicant give
13 notice to any nonparty. The findings and conclusions of the local
14 government are entitled to deference if there is any evidence to sup-
15 port the findings and are subject to review only under ORS 34.010 to
16 34.100.

17 “(7) If a local government determines based on the evidence in the
18 record that the use legally existed, the local government may, through
19 a land use decision, approve an application to alter, restore or replace
20 a use for which a land use application, building permit or other regu-
21 latory approval was required but record of the approval is unavailable
22 for:

23 “(a) A dwelling built after January 1, 2001, that complies with sub-
24 section (3)(a)(A) to (D) and (b) of this section; or

25 “(b) A nonresidential use or structure.

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

28 “(9) An approval of an application under this section expires only
29 if the property owner has not commenced development of the struc-
30 ture or use on or before December 30, 2030.

1 **SECTION 3. Section 2 of this 2021 Act is repealed on January 2,**
2 **2031.”.**

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