

HB 2289-3  
(LC 2170)  
4/19/21 (RLM/ps)

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

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2289**

1 In line 2 of the printed bill, after “wildfires” insert “; and declaring an  
2 emergency”.

3 Delete lines 4 through 8 and insert:

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

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

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

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

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

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

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

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

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

9       “(a) The former dwelling:

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

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

13       “(C) Had interior wiring for interior lights;

14       “(D) Had a heating system; and

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

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

21       “(b) The proposed dwelling will:

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

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

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

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

1       “(i) January 1, 2008; or

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

3       “(4) A local government may not add conditions to the approval or  
4       siting of a dwelling under subsection (3) of this section except as nec-  
5       essary to maintain participation in the National Flood Insurance Pro-  
6       gram under 42 U.S.C. 4001 et seq.

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

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

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

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

12       “(6) The findings of the local government or its designee in ap-  
13       proving an application under subsection (3) of this section is not a land  
14       use decision. The local government may not require an applicant give  
15       notice to any nonparty. The findings and conclusions of the local  
16       government are entitled to deference if there is any evidence to sup-  
17       port the findings and are subject to review only under ORS 34.010 to  
18       34.100.

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

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

27       “(b) A nonresidential use or structure.

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

30       “(9) An approval of an application under this section expires only

1 if the property owner has not commenced development of the struc-  
2 ture or use on or before December 30, 2030.

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

5 **“SECTION 4. (1)** Notwithstanding ORS 454.655 (4), the Department  
6 of Environmental Quality shall issue a decision on a permit to repair  
7 or replace a subsurface sewage disposal system that serves a dwelling  
8 approved under section 2 of this 2021 Act without regard to availability  
9 of a community or area-wide sewerage system.

10 **“(2)** Notwithstanding ORS 197.180, the department shall issue a de-  
11 cision on a permit to repair or replace a subsurface sewage disposal  
12 system that serves a dwelling approved under section 2 of this 2021 Act  
13 without regard to whether a local government has issued a land use  
14 compatibility statement for the dwelling.

15 **“(3)** The department shall approve a permit to repair or replace a  
16 subsurface sewage disposal system that serves a dwelling approved  
17 under section 2 of this 2021 Act if:

18 **“(a)** A subsurface sewage disposal system served the dwelling on  
19 July 30, 2020; and

20 **“(b)** Issuance of the permit and operation of the system would not  
21 result in pollution of surface waters of the state or result in pollution  
22 of ground water that would threaten public health or other beneficial  
23 uses of ground water.

24 **“(4)** This section does not apply to a permit for a dwelling for which  
25 the owner received financial assistance from the state or federal gov-  
26 ernment for the repair or replacement of the subsurface sewage dis-  
27 posal system.

28 **“(5)** This section does not affect the authority of the department  
29 or the Environmental Quality Commission to grant a variance or an  
30 exemption for a subsurface sewage disposal system for a dwelling or

1 other use.

2 **“SECTION 5. Sections 2 and 4 of this 2021 Act are repealed on Jan-**  
3 **uary 2, 2031.**

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

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