

A-Engrossed
House Bill 2985

Ordered by the House March 17
Including House Amendments dated March 17

Sponsored by Representative MARSH, Senators DEMBROW, GOLDEN; Representatives GRAYBER, OSBORNE, OWENS, Senator FREDERICK (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 [*Department of Consumer and Business Services*] **State Forestry Department** to establish Prescribed Fire Liability Pilot Program and administer program [*or authorize Oregon Insurance Guaranty Association to administer program*].

Establishes Prescribed Fire Claims Fund in State Treasury, separate and distinct from General Fund, for purposes related to program.

Instructs State Forestry Department to report to Governor and committee or interim committee of Legislative Assembly related to natural resources on performance of program on or before April 1, 2028.

Appropriates moneys to department out of General Fund for deposit in Prescribed Fire Claims Fund.

Provides that authorization of certain burning and of activities under Certified Burn Manager program applies on lands within forest protection district.

Sunsets program and fund January 2, 2028.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to prescribed fires; creating new provisions; amending ORS 526.360; and declaring an
3 emergency.

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

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

6 (a) **“Cultural burn” means the intentional application of fire to land by an Indian tribe**
7 **or cultural fire practitioner to achieve cultural goals or objectives identified by a tribal or-**
8 **dinance, traditional tribal custom or law of an Indian tribe, such as subsistence, ceremonial**
9 **activities, biodiversity or other benefits.**

10 (b) **“Cultural fire practitioner” means a person associated with an Indian tribe with ex-**
11 **perience in burning to meet cultural goals or objectives, including subsistence, ceremonial**
12 **activities, biodiversity or other benefits.**

13 (c) **“Indian tribe” means a federally recognized Indian tribe in Oregon.**

14 (2) **The State Forestry Department shall establish a Prescribed Fire Liability Pilot Pro-**
15 **gram and administer the program.**

16 (3) **Notwithstanding subsection (2) of this section, the Department of Consumer and**
17 **Business Services shall administer reimbursements for claims under the program.**

18 (4) **The program must be administered to:**

19 (a) **Increase the pace and scale of the use of prescribed fire and cultural burning.**

20 (b) **Reduce barriers for conducting prescribed fires and cultural burning.**

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 (c) Support coverage for losses from prescribed fires and cultural burning by nonpublic
2 entities such as cultural fire practitioners, private landowners, nongovernmental entities,
3 Certified Burn Managers as defined in ORS 526.005, companies, contractors and operators.

4 (d) Support nonpublic entities, such as cultural fire practitioners, private landowners,
5 nongovernmental entities, Certified Burn Managers, companies, contractors and operators,
6 that are alleged to have caused damages resulting from prescribed fires or cultural burning.

7 (5) Under the program, the Department of Consumer and Business Services may reim-
8 burse claims related to:

9 (a) A prescribed fire conducted or supervised by the State Forester, a forest protective
10 association or a rangeland protection association, pursuant to ORS 477.315 to 477.325.

11 (b) A prescribed fire in a forest protection district, as described in ORS 477.205 to 477.281,
12 that is conducted or supervised by a Certified Burn Manager pursuant to ORS 526.360.

13 (c) A cultural burn conducted or supervised by a cultural fire practitioner.

14 (6) The Department of Consumer and Business Services may only reimburse a claim for
15 recoverable damages, as described in ORS 477.089 (2), or for actual costs, as described in ORS
16 477.068, subject to the provisions of ORS 477.120, if:

17 (a) The State Forester, a forest protective association or a Certified Burn Manager re-
18 viewed and approved a burn plan before the prescribed fire or cultural burning;

19 (b) Any necessary permit was obtained before the prescribed fire or cultural burning was
20 conducted;

21 (c) The prescribed fire or cultural burning complied with any requirements under a burn
22 plan or permit;

23 (d) The claim was submitted to the Department of Consumer and Business Services not
24 more than 60 days after an incident report was completed or as specified by rule by the State
25 Forestry Department; and

26 (e) The State Forestry Department has certified that the claim satisfies the requirements
27 of paragraphs (a) to (d) of this subsection.

28 (7) The maximum amount that the Department of Consumer and Business Services may
29 pay for a claim for losses arising from a prescribed fire or cultural burn is \$1,000,000.

30 (8) The State Forestry Department:

31 (a) Shall consult with other relevant state agencies, cultural fire practitioners, the State
32 Forester, forest protective associations and Certified Burn Managers to establish guidelines
33 for the program.

34 (b) Shall adopt the guidelines by rule.

35 (c) Shall make the guidelines publicly available on a department website.

36 (d) Notwithstanding subsection (3) of this section, shall adopt rules to determine how
37 claims under the program will be accepted and processed.

38 (e) Shall adopt by rule a definition of the term "prescribed fire" for purposes of imple-
39 menting this section.

40 (f) Shall adopt rules establishing requirements for incident reports for prescribed fires
41 and cultural burning.

42 (g) May adopt rules imposing requirements for eligibility for reimbursement of a claim
43 under this section that are in addition to eligibility requirements described in subsection (6)
44 of this section.

45 (9) A person who interacts with an Indian tribe or cultural fire practitioner pursuant to

1 this section shall respect tribal sovereignty, customs and culture.

2 (10) Notwithstanding any other provision of law, the state's liability for all claims under
3 this section and the guidelines developed by the department pursuant to subsection (8) of this
4 section, shall be limited as described in this section and to the amount in the Prescribed Fire
5 Claims Fund established by section 2 of this 2023 Act.

6 (11) The provisions of ORS 183.310 to 183.497 do not apply to rules adopted under this
7 section.

8 (12) This section does not undermine or diminish the exercise of tribal sovereignty.

9 **SECTION 2.** (1) There is established in the State Treasury, separate and distinct from the
10 General Fund, the Prescribed Fire Claims Fund. Interest earned by the fund shall be credited
11 to the fund. All moneys in the fund are continuously appropriated to the Department of
12 Consumer and Business Services for the program described in section 1 of this 2023 Act.

13 (2) The fund shall consist of all moneys credited to the fund, including moneys appropri-
14 ated or transferred to the fund by the Legislative Assembly.

15 (3) If the department authorizes the Oregon Insurance Guaranty Association to admin-
16 ister the program, the department shall distribute moneys in the fund to the association as
17 necessary for the program.

18 **SECTION 3.** (1) Sections 1 and 2 of this 2023 Act are repealed on January 2, 2028.

19 (2) Forty-five days before the date specified in subsection (1) of this section, the Depart-
20 ment of Consumer and Business Services and the State Forestry Department shall determine
21 the number of claims certified by the State Forestry Department pursuant to section 1 (6)(e)
22 of this 2023 Act that have not been processed.

23 (3) Any moneys in the Prescribed Fire Claims Fund that are unexpended and unobligated
24 on the date of the repeal of sections 1 and 2 of this 2023 Act by subsection (1) of this section
25 shall revert to the General Fund.

26 (4) The Department of Consumer and Business Services shall determine the amount of
27 unexpended and unobligated moneys described in subsection (3) of this section, based on the
28 amount remaining in the fund and the estimated number of claims described in subsection
29 (2) of this section.

30 **SECTION 4.** (1) On or before April 1, 2028, in consultation with the Department of Con-
31 sumer and Business Services, the State Forestry Department shall report to the Governor
32 and to a committee or interim committee of the Legislative Assembly related to natural re-
33 sources, in the manner prescribed in ORS 192.245, on the performance of the Prescribed Fire
34 Liability Pilot Program described in section 1 of this 2023 Act.

35 (2) The report must include:

36 (a) The number of claims that were processed after the program was established and
37 before the date of the report.

38 (b) The total costs of claims paid.

39 (c) A reference to an incident report for each claim processed or paid after the program
40 was established and before the date of the report.

41 (d) Recommendations for revising the program and improving administration of the pro-
42 gram if sections 1 and 2 of this 2023 Act are not repealed on January 2, 2028, pursuant to
43 section 3 of this 2023 Act.

44 **SECTION 5.** In addition to and not in lieu of any other appropriation, there is appropri-
45 ated to the Department of Consumer and Business Services, for the biennium beginning July

1 **1, 2023, out of the General Fund, the amount of \$10,000,000, for deposit in the Prescribed Fire**
2 **Claims Fund established by section 2 of this 2023 Act.**

3 **SECTION 6.** ORS 526.360 is amended to read:

4 526.360. (1) The State Board of Forestry, the State Forester and forest protective associations
5 may assist to the extent practical in developing, for forestry, grazing or agricultural uses, [*all*
6 *forestland classified pursuant to ORS 526.328 or 526.340*] **lands within a forest protection district,**
7 **as described in ORS 477.205 to 477.281,** for such uses, including the burning of brush or other
8 flammable material for the purpose of:

9 (a) Removing a fire hazard to any property;

10 (b) Preparing seed beds;

11 (c) Removing obstructions to or interference with the proper seeding or agricultural or grazing
12 development or use of that land;

13 (d) Promoting the establishment of new forest crops on cutover, denuded or underproductive
14 lands;

15 (e) Implementing pest prevention and suppression activities, as provided in ORS 527.310 to
16 527.370; or

17 (f) Promoting improvements to forest health, including improvements to fish and wildlife habitat.

18 (2) Upon request of the owner or the agent of the owner of [*any forestland classified pursuant*
19 *to ORS 526.328 or 526.340*] **lands within a forest protection district,** the forester or a forest pro-
20 tective association may perform or supervise burning operations thereon for any of the purposes
21 stated in subsection (1) of this section. The owner or the agent of the owner shall supply such per-
22 sonnel and equipment and shall perform such fire control actions and activities as the forester or
23 forest protective association may require while there is danger of the fire spreading. The forester
24 or forest protective association may refuse to perform or supervise burning or to issue any burning
25 permit when, in the judgment of the forester or forest protective association, conditions so warrant.

26 (3) To accomplish the purposes set forth in subsection (1) of this section, the board shall estab-
27 lish by rule a Certified Burn Manager program.

28 (4) The rules shall include:

29 (a) Certification standards, requirements and procedures;

30 (b) Standards, requirements and procedures to revoke certification;

31 (c) Actions and activities that a Certified Burn Manager must perform;

32 (d) Actions and activities that a Certified Burn Manager may not allow or perform;

33 (e) Limitations on the use of a Certified Burn Manager; and

34 (f) Any other standard, requirement or procedure that the board considers necessary for the safe
35 and effective administration of the program.

36 (5) The rules may establish and impose fees for participation in the program.

37 (6) When a burning for any of the purposes stated in subsection (1) of this section on [*forestland*
38 *classified pursuant to ORS 526.328 or 526.340*] **lands within a forest protection district** is started
39 under the supervision of and supervised by the forester, a forest protective association or a Certified
40 Burn Manager, a person may not be held liable for property damage resulting from that burning
41 unless the damage is caused by the negligence of the person.

42 **SECTION 7. This 2023 Act being necessary for the immediate preservation of the public**
43 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
44 **on its passage.**