

HOUSE AMENDMENTS TO HOUSE BILL 2985

By COMMITTEE ON CLIMATE, ENERGY, AND ENVIRONMENT

March 17

1 On page 1 of the printed bill, line 2, after the semicolon insert “creating new provisions;
2 amending ORS 526.360;”.

3 Delete lines 4 through 27.

4 On page 2, delete lines 1 through 18 and insert:

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.**

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

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

27 **“(5) Under the program, the Department of Consumer and Business Services may reim-**
28 **burse claims related to:**

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

31 **“(b) A prescribed fire in a forest protection district, as described in ORS 477.205 to**
32 **477.281, that is conducted or supervised by a Certified Burn Manager pursuant to ORS**
33 **526.360.**

34 **“(c) A cultural burn conducted or supervised by a cultural fire practitioner.**

35 **“(6) The Department of Consumer and Business Services may only reimburse a claim for**

1 recoverable damages, as described in ORS 477.089 (2), or for actual costs, as described in ORS
2 477.068, subject to the provisions of ORS 477.120, if:

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

5 “(b) Any necessary permit was obtained before the prescribed fire or cultural burning
6 was conducted;

7 “(c) The prescribed fire or cultural burning complied with any requirements under a burn
8 plan or permit;

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

12 “(e) The State Forestry Department has certified that the claim satisfies the require-
13 ments of paragraphs (a) to (d) of this subsection.

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

16 “(8) The State Forestry Department:

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

20 “(b) Shall adopt the guidelines by rule.

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

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

24 “(e) Shall adopt by rule a definition of the term ‘prescribed fire’ for purposes of imple-
25 menting this section.

26 “(f) Shall adopt rules establishing requirements for incident reports for prescribed fires
27 and cultural burning.

28 “(g) May adopt rules imposing requirements for eligibility for reimbursement of a claim
29 under this section that are in addition to eligibility requirements described in subsection (6)
30 of this section.

31 “(9) A person who interacts with an Indian tribe or cultural fire practitioner pursuant
32 to this section shall respect tribal sovereignty, customs and culture.

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

37 “(11) The provisions of ORS 183.310 to 183.497 do not apply to rules adopted under this
38 section.

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

40 Delete lines 28 through 30 and insert:

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

42 “(2) Forty-five days before the date specified in subsection (1) of this section, the De-
43 partment of Consumer and Business Services and the State Forestry Department shall de-
44 termine the number of claims certified by the State Forestry Department pursuant to
45 section 1 (6)(e) of this 2023 Act that have not been processed.

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

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

8 “**SECTION 4.** (1) On or before April 1, 2028, in consultation with the Department of
9 Consumer and Business Services, the State Forestry Department shall report to the Gover-
10 nor and to a committee or interim committee of the Legislative Assembly related to natural
11 resources, in the manner prescribed in ORS 192.245, on the performance of the Prescribed
12 Fire Liability Pilot Program described in section 1 of this 2023 Act.

13 “(2) The report must include:

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

16 “(b) The total costs of claims paid.

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

19 “(d) Recommendations for revising the program and improving administration of the
20 program if sections 1 and 2 of this 2023 Act are not repealed on January 2, 2028, pursuant
21 to section 3 of this 2023 Act.”.

22 In line 31, delete “4” and insert “5”.

23 After line 34, insert:

24 “**SECTION 6.** ORS 526.360 is amended to read:

25 “526.360. (1) The State Board of Forestry, the State Forester and forest protective associations
26 may assist to the extent practical in developing, for forestry, grazing or agricultural uses, [*all*
27 *forestland classified pursuant to ORS 526.328 or 526.340*] **lands within a forest protection district,**
28 **as described in ORS 477.205 to 477.281,** for such uses, including the burning of brush or other
29 flammable material for the purpose of:

30 “(a) Removing a fire hazard to any property;

31 “(b) Preparing seed beds;

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

34 “(d) Promoting the establishment of new forest crops on cutover, denuded or underproductive
35 lands;

36 “(e) Implementing pest prevention and suppression activities, as provided in ORS 527.310 to
37 527.370; or

38 “(f) Promoting improvements to forest health, including improvements to fish and wildlife
39 habitat.

40 “(2) Upon request of the owner or the agent of the owner of [*any forestland classified pursuant*
41 *to ORS 526.328 or 526.340*] **lands within a forest protection district,** the forester or a forest pro-
42 tective association may perform or supervise burning operations thereon for any of the purposes
43 stated in subsection (1) of this section. The owner or the agent of the owner shall supply such per-
44 sonnel and equipment and shall perform such fire control actions and activities as the forester or
45 forest protective association may require while there is danger of the fire spreading. The forester

1 or forest protective association may refuse to perform or supervise burning or to issue any burning
2 permit when, in the judgment of the forester or forest protective association, conditions so warrant.

3 “(3) To accomplish the purposes set forth in subsection (1) of this section, the board shall es-
4 tablish by rule a Certified Burn Manager program.

5 “(4) The rules shall include:

6 “(a) Certification standards, requirements and procedures;

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

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

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

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

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

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

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

19 In line 35, delete “5” and insert “7”.

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