

Enrolled Senate Bill 80

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Natural Resources and Wildfire Recovery)

CHAPTER

AN ACT

Relating to wildfire; creating new provisions; amending ORS 215.495, 431A.410, 431A.412, 455.612, 476.392, 476.396, 476.690, 477.027, 477.490, 477.748 and 526.360 and sections 11 and 12d, chapter 592, Oregon Laws 2021; and declaring an emergency.

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

STATEWIDE WILDFIRE HAZARD MAP

SECTION 1. ORS 477.490 is amended to read:

477.490. (1) The State Forestry Department shall oversee the development and maintenance of a comprehensive *[statewide map of wildfire risk]* **statewide wildfire hazard map** that displays the wildfire *[risk classes]* **hazard zones** described in subsection *[(4)]* (5) of this section and populates the Oregon Wildfire Risk Explorer.

(2) The purposes of the map are to:

(a) Educate Oregon residents and property owners about the residents' and property owners' wildfire exposure by providing transparent and science-based information.

(b) Assist in prioritizing fire adaptation and mitigation resources for the most vulnerable locations.

(c) Identify where defensible space standards and home hardening codes will apply.

[(2)] **(3)** The Oregon Wildfire Risk Explorer must be the official wildfire planning and *[risk]* **hazard** classification mapping tool for the State of Oregon.

[(3)] **(4)** The State Board of Forestry shall establish by rule criteria by which the map must be developed and maintained, including criteria concerning the use of the most current wildfire assessments.

[(4)] **(5)** In consultation with Oregon State University, the department shall establish *[five]* **three** statewide wildfire *[risk classes of]* **hazard zones that are titled** *[extreme,]* high, moderate*[,]* **and** low *[and no risk]* **hazard zones**. The *[classes]* **zones** must be:

(a) Consistent with ORS 477.027.

(b) Based on weather, climate, topography and vegetation.

[(5)] **(6)** The department shall enter into an agreement with the university that provides that the university will develop and maintain the map and make the map publicly available in electronic form through the Oregon Wildfire Risk Explorer.

~~[(6)]~~ (7) The board shall adopt rules that:

(a) Provide opportunities for public input into the assignment of properties to the wildfire *[risk classes]* **hazard zones** described in subsection ~~[(4)]~~ (5) of this section.

(b) Require the department to provide notice and information **to a property owner whose property is assigned to the high hazard zone within the wildland-urban interface, as defined pursuant to ORS 477.027, about the fact that the property has been assigned to the high hazard zone, the effects of the assignment and** *[about]* how *[a]* the property owner may appeal *[an]* the assignment of the property owner's property to the *[extreme or]* high *[wildfire risk class]* **hazard zone**.

(c) Allow affected property owners and local governments to appeal the assignment of properties to the wildfire *[risk classes]* **hazard zones** after the map is developed, after any updates to the map and within a reasonable time after delivery of the notice and information described in paragraph (b) of this subsection.

[(d) Establish a specific process for appeals through which a requested change in assignment is assessed based on:]

[(A) Whether the assignment is consistent with the criteria described in subsection (3) of this section;]

[(B) Any pertinent facts that may justify a change in the assignment; and]

[(C) Any error in the data the department used to determine the assignment, if the error justifies a change in the assignment.]

(d) Provide that assignments of properties to the high hazard zone may be appealed as a contested case as described in ORS chapter 183.

(8) Before sending notices described in subsection (7)(b) of this section, the department shall seek review of the notices by the Wildfire Programs Advisory Council to receive council recommendations concerning tone, clarity of language and presentation of information.

~~[(7)]~~ (9) The map must:

(a) Be based on the wildfire *[risk classes]* **hazard zones**.

(b) Be sufficiently detailed to allow the assessment of wildfire *[risk]* **hazard** at the property-ownership level.

(c) Include the boundaries of the wildland-urban interface, as defined in ORS 477.015, consistent with national standards.

(d) Include a layer that geospatially displays the locations of socially and economically vulnerable communities.

(e) Be completed and released expeditiously, following the collaboration described in subsection (10) of this section.

~~[(8)]~~ (10) To develop and maintain the map, **the department and** the university shall collaborate with *[the department,]* the State Fire Marshal, other state agencies, local governments, federally recognized Indian tribes in this state, other public bodies and any other information sources that the university deems appropriate.

(11) In implementing subsections (7)(a) and (10) of this section, the department and the university shall provide for robust community engagement through a process that:

(a) Ensures, through the use of clear language, graphics, visuals and examples, that the underlying criteria for assigning hazard zones are publicly available and comprehensible to a public audience.

(b) Is interactive and does not consist solely of delivering information in a top-down manner.

(c) Is coordinated with local partners, including counties, relevant state agencies and the Wildfire Programs Advisory Council.

(12) In addition to the community engagement described in subsection (11) of this section, to ensure that local characteristics in each area of this state are considered in the mapping process and before the draft map is released, the department shall meet with county com-

missioners and the county commissioners' staff in eight in-person meetings throughout this state.

(13) When the draft map is released but before final publication of the map occurs:

(a) The department shall accept public comment on the map.

(b) After the meetings described in subsection (12) of this section, county commissioners, upon request by the county commissioners, must have one additional opportunity, arranged and scheduled by the Association of Oregon Counties, with either in-person attendance or a hybrid of in-person and remote attendance, to discuss concerns about the map and potential changes to the map.

[(9)] (14) In maintaining the map, the university shall make technical adjustments as needed and update the map consistent with the results of appeals described in subsection [(6)(b)] (7)(b) of this section.

[(10)] (15) The university shall provide technical assistance to representatives of state and local government, and to landowners, that use the map.

(16) Agencies of this state shall, as appropriate, use the map layer described in subsection (9)(d) of this section to:

(a) Direct resources for wildfire hazard reduction and wildfire resiliency to those most in need; and

(b) Assist with identifying communities for extensive, targeted engagement and outreach related to wildfire hazard reduction and wildfire resiliency.

(17) Agencies that use the map layer described in subsection (9)(d) of this section shall conduct outreach:

(a) In partnership with community leaders and community-based organizations;

(b) By using different media;

(c) By disseminating information through local schools, stores, faith-based organizations and medical offices; and

(d) By offering all information in the languages spoken in the relevant community, as practicable.

WILDLAND-URBAN INTERFACE CRITERIA

SECTION 2. ORS 477.027 is amended to read:

477.027. (1) By rule, considering national best practices, the State Board of Forestry shall establish:

(a) A definition of "wildland-urban interface."

(b) Criteria by which the wildland-urban interface must be identified and classified.

(2) The criteria:

(a) Must recognize differences across the state in fire hazard, fire risk and structural characteristics within the wildland-urban interface.

(b) May not exclude a category of land from inclusion in the wildland-urban interface.

(3) Based on the criteria, the [board shall establish five classes of] wildland-urban interface[.]

[(4) The classes] must be integrated into the comprehensive statewide map described in ORS 477.490.

FINANCIAL ASSISTANCE RELATED TO DEFENSIBLE SPACE

SECTION 3. ORS 476.392 is amended to read:

476.392. (1) The State Fire Marshal shall establish minimum defensible space requirements for wildfire risk reduction on lands in areas identified on the [statewide map of wildfire risk] **statewide wildfire hazard map** described in ORS 477.490 as within the wildland-urban interface.

(2) The State Fire Marshal:

(a) Shall consult with the Oregon Fire Code Advisory Board to establish the requirements.

(b) Shall establish requirements that are consistent with and do not exceed the standards pertaining only to defensible space that are set forth in the International Wildland-Urban Interface Code published by the International Code Council, including the standards pertaining only to defensible space that are set forth in sections 603 and 604 of the code.

(c) May consider best practices specific to Oregon in order to establish the requirements.

(d) Shall periodically reexamine the standards set forth in the International Wildland-Urban Interface Code and update the requirements to reflect current best practices, in consultation with the Oregon Fire Code Advisory Board.

(e) Shall enforce the requirements that are applicable to lands within the jurisdiction of a local government.

(f) Shall adopt rules governing administration of the requirements.

(g) May develop and apply a graduated fee structure for use in assessing penalties on property owners for noncompliance with the requirements.

(h) Shall consult on implementation of the requirements.

(i) May adopt rules concerning reports by local governments described in subsection (4)(a) of this section.

(3) Subject to additional local requirements, the requirements shall apply statewide for all lands in the wildland-urban interface that are designated as [*extreme or high risk*] **being in the high wildfire hazard zone**, as identified on the map.

(4) Notwithstanding subsection (2) of this section, a local government may:

(a) Administer, consult on and enforce the requirements established by the State Fire Marshal, within the jurisdiction of the local government. A local government that administers or enforces the requirements established by the State Fire Marshal shall periodically report to the State Fire Marshal regarding compliance with the requirements, including the extent of compliance for each property within the jurisdiction of the local government, any change in the degree of compliance since the last report and any other information required by the State Fire Marshal by rule.

(b) Adopt and enforce local requirements for defensible space that are greater than the requirements established by the State Fire Marshal. Any local requirements that a local government adopts for defensible space must be defensible space standards selected from the framework set forth in the International Wildland-Urban Interface Code or other best practices specific to Oregon.

(c) Designate local fire districts, fire departments or fire agencies to enforce the requirements established by the State Fire Marshal or the local government pursuant to paragraph (b) of this subsection. A local government that designates enforcement must comply with the reporting requirements in paragraph (a) of this subsection.

(5) The State Fire Marshal shall administer a community risk reduction program that emphasizes education and methods of prevention with respect to wildfire risk, enforcement of defensible space requirements, response planning and community preparedness for wildfires.

(6) The State Fire Marshal may provide financial, administrative, technical or other assistance to a local government to facilitate the administration and enforcement of requirements within the jurisdiction of the local government. A local government shall expend financial assistance provided by the State Fire Marshal under this subsection to give priority to the creation of defensible space:

(a) On lands [*owned by*] **on which** members of socially and economically vulnerable communities, persons with limited proficiency in English and persons of lower income, as defined in ORS 456.055, **reside**.

(b) For critical or emergency infrastructure.

(c) For schools, hospitals and facilities that serve seniors.

LANDSCAPE RESILIENCY FUND

SECTION 4. The Landscape Resiliency Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Landscape Resiliency Fund shall be credited to the fund. The fund shall consist of all moneys placed in the fund as

provided by law and any gifts, grants, donations, endowments or bequests from any public or private source. Moneys in the fund are continuously appropriated to the State Forestry Department for landscape resilience projects and implementing ORS 477.503.

COMMUNITY RISK REDUCTION FUND

SECTION 5. ORS 476.396 is amended to read:

476.396. The Community Risk Reduction Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Community Risk Reduction Fund shall be credited to the fund. **The fund shall consist of all moneys placed in the fund as provided by law and any gifts, grants, donations, endowments or bequests from any public or private source, including individuals and private organizations.** Moneys in the fund are continuously appropriated to the State Fire Marshal for the purpose of carrying out community risk reduction and the local government financial assistance described in ORS 476.392.

CLEANER AIR SPACES

SECTION 6. ORS 431A.410, as amended by sections 30 and 30a, chapter 86, Oregon Laws 2022, is amended to read:

431A.410. (1) As used in this section:

(a) “Public education provider” has the meaning given that term in ORS 326.545.

(b) “Smoke filtration system” means an air filtration system capable of removing particulates and other harmful components of wildfire smoke in a public building.

(2) In consultation and coordination with the Oregon Health Authority, the Department of Human Services shall establish and implement a grant program that allows local governments, public education providers, [and] federally recognized Indian tribes in Oregon, **nonprofits and faith-based organizations** to:

(a) Establish emergency spaces that provide cleaner air, warming or cooling.

(b) Equip [public] buildings with:

(A) Smoke filtration systems so the [public] buildings may serve as cleaner air spaces during wildfire smoke and other poor air quality events.

(B) Warming or cooling facilities so the [public] buildings may serve as temperate spaces during dangerously hot or cold conditions.

(3) The department shall require grantees to provide access to the spaces at no charge.

(4) Warming or cooling spaces or facilities receiving grants under this section shall notify the 2-1-1 system provided for in ORS 403.400 to 403.430, regarding the space’s location and capacity and shall keep the corporation updated with the space’s hours and dates of operation.

SECTION 7. ORS 431A.412, as amended by sections 31 and 31a, chapter 86, Oregon Laws 2022, is amended to read:

431A.412. (1) As used in this section[,]:

(a) “Public education provider” has the meaning given that term in ORS 326.545.

(b) **“Support” includes, but is not limited to, providing technical expertise, equipment, staff assistance, training and general assistance.**

(2) The Department of Human Services is the lead state agency for [operating] **supporting operations** for spaces that provide cleaner air, warming or cooling. The department shall:

(a) Consult and collaborate with the Oregon Health Authority to align practices for voluntary evacuations and emergency sheltering operations.

(b) Coordinate with the authority in setting priorities for awarding grants described in ORS 431A.410.

(c) Provide support to the local agencies, public education providers, [and] federally recognized Indian tribes in Oregon, **nonprofits and faith-based organizations** that take lead roles in operating and planning spaces that provide cleaner air, warming or cooling.

WILDFIRE PROGRAMS ADVISORY COUNCIL

SECTION 8. ORS 476.690 is amended to read:

476.690. (1) As used in this section, “defensible space” has the meaning given that term in ORS 476.390.

(2) There is established a Wildfire Programs Advisory Council to advise and assist the State Wildfire Programs Director by:

(a) Closely monitoring implementation of activities related to wildfire prevention and response, including receiving and evaluating agency reports related to wildfire prevention and response.

(b) Providing advice on potential changes to the activities in order to fulfill the goal of dramatically reducing wildfire risk in this state and ensuring that regional defensible space, building codes and land use applications are appropriate.

(c) Strengthening intergovernmental and multiparty collaboration and enhancing collaboration between governments and stakeholders on an ongoing basis.

(d) Developing strategies to enhance collaboration among governmental bodies and the general public.

(e) Assessing ways the [*statewide map of wildfire risk*] **statewide wildfire hazard map** described in ORS 477.490 may inform development of building codes and land use laws, rules and decisions, in a regionally appropriate manner.

(f) Assessing the application of defensible space requirements to vineyards, crops and other cultivated vegetation.

(g) Reviewing Department of Land Conservation and Development findings and recommendations in the report required by section 11, chapter 592, Oregon Laws 2021, and making additional recommendations related to potential updates to the statewide land use planning program, local comprehensive plans and zoning codes to incorporate wildfire [*risk*] **hazard** maps and minimize wildfire [*risk*] **hazards** to people, public and private property, businesses, infrastructure and natural resources.

(3) The council is not a decision-making body but instead is established to provide advice, assistance, perspective, ideas and recommendations to the State Wildfire Programs Director.

(4) The President of the Senate and Speaker of the House of Representatives shall jointly appoint 19 members to the council as follows:

(a) One member who represents county government.

(b) One member who is a land use planning director of a county that is wholly or partially within the wildland-urban interface.

(c) One member who represents city government.

(d) One member who is a land use planning director of a city that is wholly or partially within the wildland-urban interface.

(e) One member who represents fire chiefs and has experience with managing, fighting or preventing fire within the wildland-urban interface.

(f) One member who represents fire marshals and has experience with managing, fighting or preventing fire within the wildland-urban interface.

(g) One member who represents firefighters and has experience with managing, fighting or preventing fire within the wildland-urban interface.

(h) One member who represents rural residential property owners whose property is wholly or partially within the wildland-urban interface.

(i) One member who represents farming property owners whose property is wholly or partially within the wildland-urban interface.

(j) One member who represents ranching property owners whose property is wholly or partially within the wildland-urban interface.

(k) One member who represents forestland owners whose property is wholly or partially within the wildland-urban interface.

- (L) One member who represents federally recognized Indian tribes with land wholly or partially within the wildland-urban interface.
- (m) One member who represents a utility company.
- (n) One member who represents environmental interests.
- (o) One member who represents forest resiliency interests.
- (p) One member who represents state or regional land use planning organizations.
- (q) One member who represents land and housing development interests or real estate industry interests.
- (r) One member who represents public health professionals.
- (s) One member who represents the environmental justice community.
- (5) The presiding officers shall provide public notice of an opportunity for interested parties to submit names of interest for appointment to the council.
- (6) At least [30] **seven** days before appointing a member, the presiding officers shall consult in good faith with the minority leaders of the Senate and House of Representatives on the appointment.
- (7) The term of service for each member is four years.
- (8) The members are eligible for reappointment.
- (9) The council shall elect a chairperson and vice chairperson to serve for one-year terms.
- (10) The members shall serve on the council as volunteers and are not entitled to reimbursement for expenses.
- (11) The Department of Consumer and Business Services, Department of Land Conservation and Development, [office] **Department** of the State Fire Marshal and State Forestry Department shall each provide 15 percent of the time of a full-time equivalent employee to:
 - (a) Cooperatively staff the council.
 - (b) Attend council meetings as informational resources.
 - (c) Assist with drafting reports at the request of the council.
 - (d) Support the work of the State Wildfire Programs Director.
- (12) The Oregon State University Extension Service shall designate a person to serve as staff for the council.
- (13) Each October the council shall submit a report to the Governor and appropriate committees or interim committees of the Legislative Assembly that describes progress on implementing program activities related to defensible space, building codes, land use and community emergency preparedness and that recommends improvements.

CONFORMING AMENDMENTS

SECTION 9. ORS 215.495, as amended by section 5, chapter 85, Oregon Laws 2022, and section 1, chapter 76, Oregon Laws 2023 (Enrolled Senate Bill 644), is amended to read:

215.495. (1) As used in this section:

- (a) "Accessory dwelling unit" has the meaning given that term in ORS 215.501.
- (b) "Area zoned for rural residential use" has the meaning given that term in ORS 215.501.
- (c) "Single-family dwelling" has the meaning given that term in ORS 215.501.
- (2) Consistent with a county's comprehensive plan, a county may allow an owner of a lot or parcel within an area zoned for rural residential use to construct one accessory dwelling unit on the lot or parcel, provided:
 - (a) The lot or parcel is not located within an area designated as an urban reserve as defined in ORS 195.137;
 - (b) The lot or parcel is at least two acres in size;
 - (c) One single-family dwelling is sited on the lot or parcel;
 - (d) The existing single-family dwelling property on the lot or parcel is not subject to an order declaring it a nuisance or subject to any pending action under ORS 105.550 to 105.600;
 - (e) The accessory dwelling unit will comply with all applicable laws and regulations relating to sanitation and wastewater disposal and treatment;

(f) The accessory dwelling unit will not include more than 900 square feet of usable floor area;
(g) The accessory dwelling unit will be located no farther than 100 feet from the existing single-family dwelling;

(h) If the water supply source for the accessory dwelling unit or associated lands or gardens will be a well using water under ORS 537.545 (1)(b) or (d), no portion of the lot or parcel is within an area in which new or existing ground water uses under ORS 537.545 (1)(b) or (d) have been restricted by the Water Resources Commission;

(i) No portion of the lot or parcel is within a designated area of critical state concern;

(j) The lot or parcel is served by a fire protection service provider with professionals who have received training or certification described in ORS 181A.410;

(k) If the lot or parcel is in an area identified on the [*statewide map of wildfire risk*] **statewide wildfire hazard map** described in ORS 477.490 as within the wildland-urban interface, the lot or parcel and accessory dwelling unit comply with any applicable minimum defensible space requirements for wildfire risk reduction established by the State Fire Marshal under ORS 476.392 and any applicable local requirements for defensible space established by a local government pursuant to ORS 476.392;

(L) The accessory dwelling unit complies with the construction provisions of section R327 of the Oregon Residential Specialty Code, if:

(A) The lot or parcel is in an area identified as [*extreme or high wildfire risk*] **a high wildfire hazard zone** on the [*statewide map of wildfire risk*] **statewide wildfire hazard map** described in ORS 477.490; or

(B) No [*statewide map of wildfire risk*] **statewide wildfire hazard map** has been adopted; and

(m) The county has adopted land use regulations that ensure that:

(A) The accessory dwelling unit has adequate setbacks from adjacent lands zoned for resource use;

(B) The accessory dwelling unit has adequate access for firefighting equipment, safe evacuation and staged evacuation areas; and

(C) If the accessory dwelling unit is not in an area identified on the [*statewide map of wildfire risk*] **statewide wildfire hazard map** described in ORS 477.490 as within the wildland-urban interface, the accessory dwelling unit complies with the provisions of this section and any applicable local requirements for defensible space established by a local government pursuant to ORS 476.392.

(3) A county may not allow an accessory dwelling unit allowed under this section to be used for vacation occupancy, as defined in ORS 90.100.

(4) A county that allows construction of an accessory dwelling unit under this section may not approve:

(a) A subdivision, partition or other division of the lot or parcel so that the existing single-family dwelling is situated on a different lot or parcel than the accessory dwelling unit.

(b) Construction of an additional accessory dwelling unit on the same lot or parcel.

(5) A county may require that an accessory dwelling unit constructed under this section be served by the same water supply source or water supply system as the existing single-family dwelling, provided such use is allowed for the accessory dwelling unit by an existing water right or a use under ORS 537.545. If the accessory dwelling unit is served by a well, the construction of the accessory dwelling unit shall maintain all setbacks from the well required by the Water Resources Commission or Water Resources Department.

(6) An existing single-family dwelling and an accessory dwelling unit allowed under this section are considered a single unit for the purposes of calculating exemptions under ORS 537.545 (1).

(7) Nothing in this section requires a county to allow any accessory dwelling units in areas zoned for rural residential use or prohibits a county from imposing any additional restrictions on accessory dwelling units in areas zoned for rural residential use, including restrictions on the construction of garages and outbuildings that support an accessory dwelling unit.

SECTION 10. Section 12d, chapter 592, Oregon Laws 2021, is amended to read:

Sec. 12d. (1) The Department of Consumer and Business Services shall develop the interactive mapping tool described in [section 12c of this 2021 Act] **ORS 455.614** not more than 60 days after the [statewide map of wildfire risk] **statewide wildfire hazard map** described in [section 7 of this 2021 Act] **ORS 477.490** is developed.

(2) Any delay in developing the tool may not affect a deadline concerning the map.

SECTION 11. ORS 455.612 is amended to read:

455.612. (1) For [extreme and] **the** high wildfire [risk classes] **hazard zone** in the wildland-urban interface that [are] **is** identified pursuant to ORS 477.490, the Department of Consumer and Business Services shall adopt wildfire hazard mitigation building code standards that apply to new dwellings and the accessory structures of dwellings, as described in section R327 of the 2021 Oregon Residential Specialty Code.

(2) The department shall amend section R327 of the Oregon Residential Specialty Code to include standards for additions to existing dwellings and accessory structures and for replacement of existing exterior elements covered in section R327 of the 2021 Oregon Residential Specialty Code.

(3) The department shall incorporate the standards described in subsections (1) and (2) of this section into any updates to the Oregon Residential Specialty Code.

SECTION 12. ORS 477.748 is amended to read:

477.748. (1) As used in this section, “small forestland owner” means an individual, group, federally recognized Indian tribe in Oregon or association that owns:

(a) Up to 160 acres of nonindustrial private forestland west of the crest of the Cascade Mountains; or

(b) Up to 640 acres of nonindustrial private forestland east of the crest of the Cascade Mountains.

(2) The State Forestry Department shall establish a small forestland grant program for the purpose of providing grants, on a competitive basis, to support small forestland owners in reducing wildfire risk through the restoration of landscape resiliency and the reduction of hazardous fuels on the owners’ property.

(3) In consultation with partners and stakeholders, the department shall set criteria for assessing grant applications and awarding grants. The criteria may include, but need not be limited to:

(a) Prioritization of projects on forestland in [extreme or] **the** high wildfire [risk classes] **hazard zone** described in ORS 477.490.

(b) Owner commitment to maintaining fuel reduction treatments.

(c) Owner possession of a forest management plan.

(d) Project proximity to current or past fuel mitigation efforts, supported by any owner or funding source, that would contribute to cross-boundary, landscape-scale forest resiliency.

(e) Whether the project addresses additional resource concerns, such as insect and disease management.

(f) Whether critical facilities and infrastructure may receive enhanced protection due to project outcomes.

SECTION 13. Section 11, chapter 592, Oregon Laws 2021, as amended by section 4, chapter 85, Oregon Laws 2022, is amended to read:

Sec. 11. (1) As used in this section, “defensible space” has the meaning given that term in ORS 476.390.

(2) The Department of Land Conservation and Development shall identify recommended changes to the statewide land use planning program and local comprehensive plans and zoning codes that are needed in order to incorporate wildfire [risk] **hazard** maps and minimize wildfire risk, including the appropriate levels of state and local resources necessary for effective implementation.

(3) Recommended changes may include, but need not be limited to, provisions regarding sufficient defensible space, building codes, safe evacuation and development considerations in areas of [extreme and] high wildfire risk, allowing for regional differences.

(4) On or before October 1, 2022, the department shall report to a committee or interim committee of the Legislative Assembly related to wildfire, in the manner provided in ORS 192.245, to the

State Wildfire Programs Director and to the Wildfire Programs Advisory Council on the changes recommended by the department.

(5) As necessary to identify recommended changes, the department may consult with the State Fire Marshal, the State Forestry Department, the Department of Consumer and Business Services and local governments.

PRESCRIBED FIRES

SECTION 14. (1) As used in this section:

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

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

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

(2) The State Forestry Department shall establish a Prescribed Fire Liability Pilot Program and administer the program.

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

(4) The program must be administered to:

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

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

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

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

(5) Under the program, the Department of Consumer and Business Services may reimburse claims related to:

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

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

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

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

(a) The State Forester, a forest protective association, a rangeland protection association or a Certified Burn Manager reviewed and approved a burn plan before the prescribed fire or cultural burning;

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

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

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

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

(7) The limitations imposed by ORS 30.271 apply to claims under this section for losses arising from a prescribed fire or cultural burn.

(8) The State Forestry Department:

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

(b) Shall adopt the guidelines by rule.

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

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

(e) Shall adopt by rule a definition of the term “prescribed fire” for purposes of implementing this section.

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

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

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

(10) Notwithstanding any other provision of law, the state’s liability for all claims under this section and the guidelines developed by the State Forestry Department pursuant to subsection (8) of this section, shall be limited as described in this section and to the amount in the Prescribed Fire Claims Fund established by section 15 of this 2023 Act.

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

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

SECTION 15. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Prescribed Fire Claims Fund. Interest earned by the fund shall be credited to the fund. All moneys in the fund are continuously appropriated to the Department of Consumer and Business Services for the program described in section 14 of this 2023 Act.

(2) The fund shall consist of all moneys credited to the fund, including moneys appropriated or transferred to the fund by the Legislative Assembly.

(3) If the department authorizes the Oregon Insurance Guaranty Association to administer the program, the department shall distribute moneys in the fund to the association as necessary for the program.

SECTION 16. (1) Sections 14 and 15 of this 2023 Act are repealed on January 2, 2028.

(2) Forty-five days before the date specified in subsection (1) of this section, the Department of Consumer and Business Services and the State Forestry Department shall determine the number of claims certified by the State Forestry Department pursuant to section 14 (6)(e) of this 2023 Act that have not been processed.

(3) Any moneys in the Prescribed Fire Claims Fund that are unexpended and unobligated on the date of the repeal of sections 14 and 15 of this 2023 Act by subsection (1) of this section shall revert to the General Fund.

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

SECTION 17. (1) On or before April 1, 2028, in consultation with the Department of Consumer and Business Services, the State Forestry Department shall report to the Governor and to a committee or interim committee of the Legislative Assembly related to natural

resources, in the manner prescribed in ORS 192.245, on the performance of the Prescribed Fire Liability Pilot Program described in section 14 of this 2023 Act.

(2) The report must include:

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

(b) The total costs of claims paid.

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

(d) Recommendations for revising the program and improving administration of the program if sections 14 and 15 of this 2023 Act are not repealed on January 2, 2028, pursuant to section 16 of this 2023 Act.

SECTION 18. ORS 526.360 is amended to read:

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

(a) Removing a fire hazard to any property;

(b) Preparing seed beds;

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

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

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

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

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

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

(4) The rules shall include:

(a) Certification standards, requirements and procedures;

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

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

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

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

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

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

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

APPROPRIATIONS

SECTION 19. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of the State Fire Marshal, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$3,000,000, for deposit in the Community Risk Reduction Fund established under ORS 476.396.

SECTION 20. Notwithstanding any other law limiting expenditures, the amount of \$3,000,000 is established, for the biennium beginning July 1, 2023, as the maximum limit for payment of expenses by the Department of the State Fire Marshal for community risk reduction activities funded through the Community Risk Reduction Fund established under ORS 476.396.

SECTION 21. Notwithstanding any other provision of law, the General Fund appropriation made to the State Forestry Department by section 1 (3), chapter ___, Oregon Laws 2023 (Enrolled House Bill 5020), for the biennium beginning July 1, 2023, for the planning branch, is increased by \$350,000, for implementing the amendments to ORS 477.490 and 477.027 by sections 1 and 2 of this 2023 Act.

SECTION 22. Notwithstanding any other provision of law, the General Fund appropriation made to the Higher Education Coordinating Commission by section 1 (9), chapter ___, Oregon Laws 2023 (Enrolled House Bill 5025), for the biennium beginning July 1, 2023, for public university statewide programs, is increased by \$846,173, for implementing the amendments to ORS 477.490 by section 1 of this 2023 Act.

SECTION 23. Notwithstanding any other provision of law, the General Fund appropriation made to the Higher Education Coordinating Commission by section 1 (10), chapter ___, Oregon Laws 2023 (Enrolled House Bill 5025), for the biennium beginning July 1, 2023, for statewide public services, is increased by \$30,000, for implementing the amendments to ORS 477.490 by section 1 of this 2023 Act.

SECTION 24. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Consumer and Business Services, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$5,000,000, for deposit in the Prescribed Fire Claims Fund established by section 15 of this 2023 Act.

SECTION 25. Notwithstanding any other law limiting expenditures, the amount of \$5,000,000 is established for the biennium beginning July 1, 2023, as the maximum limit for payment of expenses by the Department of Consumer and Business Services from the Prescribed Fire Claims Fund established by section 15 of this 2023 Act.

SECTION 26. Notwithstanding any other provision of law, the General Fund appropriation made to the State Forestry Department by section 1 (2), chapter ___, Oregon Laws 2023 (Enrolled House Bill 5020), for the biennium beginning July 1, 2023, for forest resources, is increased by \$242,037, for the administration of the Prescribed Fire Liability Pilot Program described in section 14 of this 2023 Act.

CAPTIONS

SECTION 27. The unit captions used in this 2023 Act are provided for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2023 Act.

EFFECTIVE DATE

SECTION 28. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on July 1, 2023.

Passed by Senate June 20, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House June 21, 2023

.....
Dan Rayfield, Speaker of House

Received by Governor:

.....M,....., 2023

Approved:

.....M,....., 2023

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2023

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Secretary of State