

Requested by Representative MARSH

**PROPOSED AMENDMENTS TO
HOUSE BILL 2985**

1 On page 1 of the printed bill, line 2, after the semicolon insert “creating
2 new provisions; 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**
7 **by an Indian tribe or cultural fire practitioner to achieve cultural**
8 **goals or objectives identified by a tribal ordinance, traditional tribal**
9 **custom or law of an Indian tribe, such as subsistence, ceremonial ac-**
10 **tivities, biodiversity or other benefits.**

11 **“(b) ‘Cultural fire practitioner’ means a person associated with an**
12 **Indian tribe with experience in burning to meet cultural goals or ob-**
13 **jectives, including subsistence, ceremonial activities, biodiversity or**
14 **other benefits.**

15 **“(c) ‘Indian tribe’ means a federally recognized Indian tribe in**
16 **Oregon.**

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

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

1 **“(4) The program must be administered to:**
2 **“(a) Increase the pace and scale of the use of prescribed fire and**
3 **cultural burning.**
4 **“(b) Reduce barriers for conducting prescribed fires and cultural**
5 **burning.**
6 **“(c) Support coverage for losses from prescribed fires and cultural**
7 **burning by nonpublic entities such as cultural fire practitioners, pri-**
8 **vate landowners, nongovernmental entities, Certified Burn Managers**
9 **as defined in ORS 526.005, companies, contractors and operators.**
10 **“(d) Support nonpublic entities, such as cultural fire practitioners,**
11 **private landowners, nongovernmental entities, Certified Burn Manag-**
12 **ers, companies, contractors and operators, that are alleged to have**
13 **caused damages resulting from prescribed fires or cultural burning.**
14 **“(5) Under the program, the Department of Consumer and Business**
15 **Services may reimburse claims related to:**
16 **“(a) A prescribed fire conducted or supervised by the State Forester,**
17 **a forest protective association or a rangeland protection association,**
18 **pursuant to ORS 477.315 to 477.325.**
19 **“(b) A prescribed fire in a forest protection district, as described in**
20 **ORS 477.205 to 477.281, that is conducted or supervised by a Certified**
21 **Burn Manager pursuant to ORS 526.360.**
22 **“(c) A cultural burn conducted or supervised by a cultural fire**
23 **practitioner.**
24 **“(6) The Department of Consumer and Business Services may only**
25 **reimburse a claim for recoverable damages, as described in ORS 477.089**
26 **(2), or for actual costs, as described in ORS 477.068, subject to the**
27 **provisions of ORS 477.120, if:**
28 **“(a) The State Forester, a forest protective association or a Certi-**
29 **fied Burn Manager reviewed and approved a burn plan before the pre-**
30 **scribed fire or cultural burning;**

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

3 **“(c) The prescribed fire or cultural burning complied with any re-**
4 **quirements under a burn plan or permit;**

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

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

11 **“(7) The maximum amount that the Department of Consumer and**
12 **Business Services may pay for a claim for losses arising from a pre-**
13 **scribed fire or cultural burn is \$1,000,000.**

14 **“(8) The State Forestry Department:**

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

18 **“(b) Shall adopt the guidelines by rule.**

19 **“(c) Shall make the guidelines publicly available on a department**
20 **website.**

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

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

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

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

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

4 **“(10) Notwithstanding any other provision of law, the state’s liabil-**
5 **ity for all claims under this section and the guidelines developed by**
6 **the department pursuant to subsection (8) of this section, shall be**
7 **limited as described in this section and to the amount in the Pre-**
8 **scribed Fire Claims Fund established by section 2 of this 2023 Act.**

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

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

13 Delete lines 28 through 30 and insert:

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

16 **“(2) Forty-five days before the date specified in subsection (1) of this**
17 **section, the Department of Consumer and Business Services and the**
18 **State Forestry Department shall determine the number of claims cer-**
19 **tified by the State Forestry Department pursuant to section 1 (6)(e)**
20 **of this 2023 Act that have not been processed.**

21 **“(3) Any moneys in the Prescribed Fire Claims Fund that are un-**
22 **expended and unobligated on the date of the repeal of sections 1 and**
23 **2 of this 2023 Act by subsection (1) of this section shall revert to the**
24 **General Fund.**

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

30 **“SECTION 4. (1) On or before April 1, 2028, in consultation with the**

1 Department of Consumer and Business Services, the State Forestry
2 Department shall report to the Governor and to a committee or in-
3 terim committee of the Legislative Assembly related to natural re-
4 sources, in the manner prescribed in ORS 192.245, on the performance
5 of the Prescribed Fire Liability Pilot Program described in section 1
6 of this 2023 Act.

7 “(2) The report must include:

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

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

11 “(c) A reference to an incident report for each claim processed or
12 paid after the program was established and before the date of the re-
13 port.

14 “(d) Recommendations for revising the program and improving ad-
15 ministration of the program if sections 1 and 2 of this 2023 Act are not
16 repealed on January 2, 2028, pursuant to section 3 of this 2023 Act.”.

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

18 After line 34, insert:

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

20 “526.360. (1) The State Board of Forestry, the State Forester and forest
21 protective associations may assist to the extent practical in developing, for
22 forestry, grazing or agricultural uses, [*all forestland classified pursuant to*
23 *ORS 526.328 or 526.340*] **lands within a forest protection district, as de-**
24 **scribed in ORS 477.205 to 477.281**, for such uses, including the burning of
25 brush or other flammable material for the purpose of:

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

27 “(b) Preparing seed beds;

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

30 “(d) Promoting the establishment of new forest crops on cutover, denuded

1 or underproductive lands;

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

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

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

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

19 “(4) The rules shall include:

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

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

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

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

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

26 “(f) Any other standard, requirement or procedure that the board consid-
27 ers necessary for the safe and effective administration of the program.

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

30 “(6) When a burning for any of the purposes stated in subsection (1) of

1 this section on [*forestland classified pursuant to ORS 526.328 or 526.340*]
2 **lands within a forest protection district** is started under the supervision
3 of and supervised by the forester, a forest protective association or a Certi-
4 fied Burn Manager, a person may not be held liable for property damage
5 resulting from that burning unless the damage is caused by the negligence
6 of the person.”.

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

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