

House Bill 4100

Sponsored by Representative HOLVEY; Senators DEMBROW, GOLDEN (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 **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: Bans the recoupment of certain costs if the costs are from the fault of a utility. Makes an electric company make a report on any fire event that is caused by a power line. Allows the report to be used as evidence. Specifies the economic damages allowed for property damage caused by a wildfire. (Flesch Readability Score: 61.5).

Prohibits the recovery from customers of certain costs and expenses that a public utility incurs as a result of negligence or a higher degree of fault on the part of the public utility.

Requires an investor-owned electric utility to provide an incident report to the Department of the State Fire Marshal and the State Forestry Department whenever a fire-related incident occurs that is caused by the utility's electric power line and to provide a copy of the incident report to the Public Utility Commission. Provides that the incident report may be used as evidence.

Specifies the recoverable economic damages allowed for damage or injury to property caused by a wildfire. Allows the use of other objectively verifiable information to determine fair market value.

A BILL FOR AN ACT

1
2 Relating to liability; creating new provisions; and amending ORS 477.089 and section 14, chapter 611,
3 Oregon Laws 2023.

4 Whereas Oregonians who have lost their homes and businesses to wildfires have struggled to
5 rebuild because of increasing costs to rebuild, supply chain challenges, inflation, underinsurance and
6 lack of insurance; and

7 Whereas Oregonians who have lost their homes and businesses to wildfire deserve to be made
8 whole for their losses; and

9 Whereas Oregonians who are harmed by wildfires caused by negligence, reckless disregard, in-
10 tentional action or other misconduct should not be forced to come up with money for appraisals to
11 prove their losses; and

12 Whereas it is important to remove unnecessary burdens on Oregonians harmed by wildfires
13 caused by others, to allow them to pursue compensation for loss of real and personal property, any
14 other economic damages, noneconomic damages and any other damages, and to clarify that they are
15 entitled to all remedies under the law, including noneconomic damages, which have always been
16 recoverable for harm caused by wildfires; and

17 Whereas to ensure accountability, Oregonians need independently operated utilities doing busi-
18 ness in the State of Oregon to promptly report all fires involving their equipment and infrastructure;
19 now, therefore,

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

21 **SECTION 1. Section 2 of this 2024 Act is added to and made a part of ORS chapter 757.**

22 **SECTION 2. The following costs and expenses that a public utility incurs are not recov-
23 erable from public utility customers:**

24 **(1) Costs and expenses that are, or are associated with, a criminal or civil fine or penalty**

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 that is based on negligence or a higher degree of fault on the part of the public utility.

2 (2) Costs and expenses that are, or are associated with, a judgment or settlement from
 3 a civil action that is based on negligence or a higher degree of fault on the part of the public
 4 utility.

5 **SECTION 3.** (1) As used in this section, “investor-owned utility” means a public utility,
 6 as defined in ORS 757.005, that provides electric power and is regulated by the Public Utility
 7 Commission under ORS chapter 757.

8 (2) An investor-owned utility shall provide an incident report to the Department of the
 9 State Fire Marshal and the State Forestry Department whenever a fire-related incident oc-
 10 curs that is caused by an electric power line that is under the management, operation,
 11 ownership or control of the investor-owned utility, and the fire-related incident occurred
 12 within this state or posed a risk to the health or safety of residences within this state.

13 (3) An investor-owned utility shall provide a copy of an incident report that is provided
 14 under this section to the Public Utility Commission and make public the incident report.

15 (4) The Department of the State Fire Marshal and the State Forestry Department may
 16 each, by rule, prescribe the form and content of incident reports that must be provided to
 17 the respective department under this section.

18 (5) An incident report provided under this section may be used as evidence, subject to
 19 the Oregon Evidence Code, in any civil, criminal or enforcement action arising out of any
 20 matter related to the fire-related incident.

21 (6) The Department of the State Fire Marshal, State Forestry Department and Public
 22 Utility Commission may adopt rules to carry out the provisions of this section.

23 **SECTION 4.** ORS 477.089 is amended to read:

24 477.089. (1) As used in this section:

25 (a) “Economic and property damage” means the sum of:

26 (A)(i) [*The lesser of*] The difference in the fair market value of property immediately before and
 27 immediately after a wildfire; or

28 (ii) The cost of restoring property to the condition the property was in immediately before a
 29 wildfire; and

30 (B) Any other objectively verifiable monetary losses.

31 (b) “Fair market value” means the amount, as determined by a state certified appraiser **or other**
 32 **objectively verifiable information**, that a willing buyer would pay to a willing seller for property
 33 in an arm’s-length transaction if both parties were fully informed about all advantages and disad-
 34 vantages of the property and neither party is acting under a compulsion to buy or sell.

35 (c) “Forest tree species” means a tree species that is capable of producing logs, fiber or other
 36 wood materials that are suitable for the production of lumber, sheeting, pulp, firewood or other
 37 commercial forest products.

38 (d) “State certified appraiser” means an individual who has been certified as a state certified
 39 appraiser under ORS 674.310 and is qualified to appraise the property that is the subject of a fair
 40 market value determination.

41 (e) “Wildfire” means a fire that:

42 (A) Results from a violation of this chapter or of rules adopted under ORS 526.016 or 526.041;
 43 or

44 (B) Originated on land used or capable of being used for growing forest tree species regardless
 45 of the existing use of the land.

1 (2) Except as provided in ORS 477.092 and 477.095, in a civil action for property damage caused
 2 by a wildfire, the recoverable **economic** damages are:

3 (a) The amount of economic and property damages, if the wildfire did not occur as the result
 4 of recklessness, gross negligence, willfulness or malice; or

5 (b) Twice the amount of economic and property damages, if the wildfire occurred as the result
 6 of recklessness, gross negligence, willfulness or malice.

7 (3) Except as provided in ORS 477.095 and subject to any other provision of this chapter limiting
 8 the recovery of fire fighting costs, a person who causes a wildfire is liable to any person or entity
 9 for the full amount of all expenses incurred by the person or entity in fighting the wildfire.

10 (4) The remedies provided under this section are in addition to any available criminal or civil
 11 penalties that may be assessed for the violation of a statute or rule but, subject to Article I, section
 12 10, of the Oregon Constitution, are the exclusive remedies **for recovering economic damages** for
 13 damages or injury to property caused by a wildfire. This subsection does not:

14 (a) Prohibit the bringing of any cross claim, counterclaim or joinder of parties;

15 (b) Prohibit the institution of a suit under ORS 496.705 for the recovery of damages for the un-
 16 lawful taking of wildlife; [or]

17 (c) Affect the applicability of ORS 31.600 to an action; **or**

18 **(d) Affect any other available remedies, including the recovery of noneconomic damages.**

19 (5) This section does not create a new cause of action or alter any existing cause of action.

20 **SECTION 5.** Section 14, chapter 611, Oregon Laws 2023, is amended to read:

21 **Sec. 14.** (1) As used in this section:

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

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

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

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

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

34 (4) The program must be administered to:

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

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

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

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

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

45 (a) A prescribed fire conducted or supervised by the State Forester, a forest protective associ-

1 ation or a rangeland protection association, pursuant to ORS 477.315 to 477.325.

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

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

5 (6) The Department of Consumer and Business Services may only reimburse a claim for recov-
6 erable **economic** damages, as described in ORS 477.089 (2), or for actual costs, as described in ORS
7 477.068, subject to the provisions of ORS 477.120, if:

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

11 (b) Any necessary permit was obtained before the prescribed fire or cultural burning was con-
12 ducted;

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

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

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

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

22 (8) The State Forestry Department:

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

26 (b) Shall adopt the guidelines by rule.

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

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

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

32 (f) Shall adopt rules establishing requirements for incident reports for prescribed fires and cul-
33 tural burning.

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

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

38 (10) Notwithstanding any other provision of law, the state’s liability for all claims under this
39 section and the guidelines developed by the State Forestry Department pursuant to subsection (8)
40 of this section, shall be limited as described in this section and to the amount in the Prescribed Fire
41 Claims Fund established by section 15, **chapter 611, Oregon Laws 2023** [of this 2023 Act].

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

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

44 **SECTION 6. (1) The amendments to ORS 477.089 and section 14, chapter 611, Oregon**
45 **Laws 2023, by sections 4 and 5 of this 2024 Act apply to claims that arise before, on or after**

1 **the effective date of this 2024 Act and to actions in which a court has not entered a final**
2 **judgment before the effective date of this 2024 Act.**

3 **(2) As used in subsection (1) of this section, “final judgment” means a judgment that is**
4 **not subject to further appeal or review or for which the time to file an appeal has expired**
5 **without a party filing an appeal.**

6
