

House Bill 3048

Sponsored by Representative SCHAUFLER

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**.

Prohibits State Fire Marshal from requiring structural changes to building constructed to standard used by building official for building approval. Provides that building official has exclusive authority to approve building design and construction, including but not limited to determining compliance with fire and life safety requirements and issuance of certificate of occupancy.

A BILL FOR AN ACT

1
2 Relating to the authority to regulate buildings; creating new provisions; and amending ORS 476.030,
3 478.920, 479.155, 479.195, 479.295, 480.160 and 480.450.

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

5 **SECTION 1.** ORS 476.030 is amended to read:

6 476.030. (1) **As used in this section:**

7 (a) **"Adult foster home" has the meaning given that term in ORS 443.705.**

8 (b) **"Area agency" has the meaning given that term in ORS 410.040.**

9 (c) **"Building official" has the meaning given that term in ORS 455.715.**

10 (d) **"Community mental health program" means a program established under ORS 430.620**
11 **(1)(b).**

12 (e) **"Developmental disabilities program" means a program established under ORS 430.620**
13 **(1)(a).**

14 ~~[(1)]~~ **(2) Except as provided in this section,** the State Fire Marshal shall enforce all statutes,
15 and make rules relating to:

16 (a) The prevention of fires.

17 (b) The storage and use of combustibles and explosives.

18 (c) The maintenance and regulation of structural fire **and life** safety features in occupied
19 structures and *[overseeing the safety of and directing]* the **safety**, means and adequacy of exit in case
20 of fire from factories, asylums, hospitals, churches, schools, halls, theaters, amphitheaters, *[all*
21 *buildings, except private residences, which are occupied for sleeping purposes,]* **buildings occupied for**
22 **sleeping purposes that are not private residences** and all other places where large numbers of
23 persons work, live or congregate from time to time for any purpose. *[except that structural changes*
24 *shall not be required in buildings built, occupied and maintained in conformity with state building code*
25 *regulations applicable at the time of construction.]*

26 (d) Standards for equipment used for fire protection purposes within this state including stand-
27 ard thread for fire hose couplings and hydrant fittings.

28 **(3) Subsection (2)(c) of this section does not authorize the State Fire Marshal to require**
29 **structural changes in a building built, occupied and maintained in conformity with the state**
30 **building code regulations that were applicable at the time of construction or, if different**

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 from the state building code, with the standard under which the building was approved by a
2 building official.

3 (4) The building official having jurisdiction shall consult with the State Fire Marshal or
4 local fire marshal during the design, plan review and construction of a building. However, the
5 building official has exclusive authority to approve the design and construction of the build-
6 ing, including but not limited to determining whether the building complies with fire and life
7 safety requirements and whether to issue a certificate of occupancy.

8 (5) Subsections (3) and (4) of this section do not limit any authority of the State Fire
9 Marshal or a local fire marshal to conduct routine fire and life safety code inspections of
10 occupied buildings, enforce the maintenance of existing fire and life safety features in occu-
11 pied buildings or enforce other programs as provided by law, including but not limited to
12 authority granted under subsections (9) and (10) of this section or ORS 479.160, 479.170,
13 479.195, 479.215, 479.217, 479.220, 480.244, 480.450 or 657A.420.

14 [(2)] (6) The State Fire Marshal and deputies shall have such powers and perform such other
15 duties as are prescribed by law.

16 [(3)] (7)(a) If, in the opinion of the State Fire Marshal, a governmental subdivision of the state
17 has enacted adequate regulations generally conforming to state and national standards concerning
18 fire prevention, fire safety measures and building construction requirements for safety, and if the
19 governmental subdivision provides reasonable enforcement of its regulations, the State Fire Marshal
20 may exempt the area subject to such regulation either partially or fully from the statutes, rules and
21 regulations administered by the State Fire Marshal. Prior to adoption of any such exemption, the
22 State Fire Marshal may request from the Department of Public Safety Standards and Training con-
23 sideration of and recommendations regarding the exemption.

24 (b) [*The exemption*] **An exemption under this subsection** may extend for a two-year period,
25 and may be renewed from time to time, but may be canceled by the State Fire Marshal following
26 30 days' written notice if the State Fire Marshal finds that the governmental subdivision's regu-
27 lations or enforcement thereof are not reasonably sufficient. The governmental subdivision shall
28 furnish a copy of such regulations to the State Fire Marshal and shall file with the State Fire
29 Marshal any amendment thereto within 30 days before the effective date of such amendment.

30 (c) The State Fire Marshal shall designate a person or division within such governmental sub-
31 division as an approved authority for exercising functions relating to fire prevention, fire safety
32 measures and **consulting with building officials regarding** building construction. Upon request of
33 a local official having enforcement responsibility and a showing of unusual fire hazard or other
34 special circumstances, the State Fire Marshal shall make investigation and appropriate recommen-
35 dations.

36 [(4)] (8) The State Fire Marshal may investigate or cause an investigation to be made to deter-
37 mine the probable cause, origin and circumstances of any fire and shall classify such findings as the
38 State Fire Marshal may find appropriate to promote fire protection and prevention.

39 [(5)] (9) The State Fire Marshal shall provide training in fire safety inspection to the Depart-
40 ment of Human Services, area agencies, the Oregon Health Authority, community mental health
41 programs, developmental disabilities programs and designees of the Long Term Care Ombudsman.
42 If an adult foster home has been inspected by the Department of Human Services, the Oregon Health
43 Authority, an area agency, a community mental health program or a developmental disabilities
44 program and the agency conducting the inspection reasonably believes that the adult foster home
45 is not in compliance with applicable fire safety rules, the agency conducting the inspection may re-

1 quest the State Fire Marshal to inspect or cause an inspection to be made. If a designee of the Long
 2 Term Care Ombudsman, in the course of visiting an adult foster home, believes that the adult foster
 3 home is not in compliance with applicable fire safety rules, the designee shall report the problem
 4 to the appropriate agency to request a fire safety inspection by the office of the State Fire Marshal
 5 or by a designated representative of the office of the State Fire Marshal.

6 [(6)] (10) Upon the request of the Department of Human Services, the Oregon Health Authority,
 7 an area agency, a community mental health program or a developmental disabilities program, the
 8 State Fire Marshal shall inspect or cause an inspection to be made to determine if the adult foster
 9 home is in compliance with rules jointly adopted by the Department of Human Services and the
 10 State Fire Marshal establishing fire safety standards for adult foster homes.

11 [(7) *As used in subsections (5) and (6) of this section:*]

12 [(a) *“Adult foster home” has the meaning given that term in ORS 443.705.*]

13 [(b) *“Area agency” has the meaning given that term in ORS 410.040.*]

14 [(c) *“Community mental health program” means a program established under ORS 430.620 (1)(b).*]

15 [(d) *“Developmental disabilities program” means a program established under ORS 430.620*
 16 *(1)(a).*]

17 **SECTION 2.** ORS 478.920 is amended to read:

18 478.920. The fire prevention code may provide reasonable regulations relating to:

19 (1) Prevention and suppression of fires.

20 (2) Mobile fire apparatus means of approach to buildings and structures.

21 (3) Providing fire-fighting water supplies and fire detection and suppression apparatus adequate
 22 for the protection of buildings and structures.

23 (4) Storage and use of combustibles and explosives.

24 (5) Construction, maintenance and regulation of fire escapes.

25 (6) Means and adequacy of exit in case of fires and the [*regulation and*] maintenance **and reg-**
 26 **ulation** of fire and life safety features in factories, asylums, hospitals, churches, schools, halls, the-
 27 aters, amphitheaters, [*all buildings, except private residences, which are occupied for sleeping*
 28 *purposes,*] **buildings occupied for sleeping purposes that are not private residences** and all
 29 other places where large numbers of persons work, live or congregate from time to time for any
 30 purpose.

31 (7) Requiring the issuance of permits by the fire chief of the district before burning trash or
 32 waste materials.

33 (8) **Except as provided in ORS 476.030 (4)**, providing for the inspection of premises by officers
 34 designated by the board of directors, and requiring the removal of fire hazards found on premises
 35 at such inspections.

36 **SECTION 3.** ORS 479.155 is amended to read:

37 479.155. (1) As used in this section, “director” means the Director of the Department of Con-
 38 sumer and Business Services.

39 (2) Prior to construction or alteration of a hospital, public building as defined in ORS 479.168,
 40 public garage, dry cleaning establishment, apartment house, hotel, bulk oil storage plant, school,
 41 institution as defined in ORS 479.210, or any other building or structure regulated by the State Fire
 42 Marshal for use and occupancy or requiring [*approval by*] **consultation with** the State Fire Marshal
 43 pursuant to statute, the owner shall submit to the director two copies of a plan or sketch showing
 44 the location of the building or structure with relation to the premises, distances, lengths and details
 45 of construction as the director shall require. A filing is not required with respect to any such

1 building or structure in any area exempted by order of the State Fire Marshal pursuant to ORS
 2 476.030. Approval of the plans or sketches by the director is considered approval by the State Fire
 3 Marshal and satisfies any statutory provision requiring [*approval by*] **consultation with** the State
 4 Fire Marshal.

5 (3) A declaration of the value of the proposed construction or alteration and the appropriate fee
 6 required under ORS 455.210 must accompany the plan or sketch. However, the determination of
 7 value or valuation shall be made by the director.

8 (4) The director shall be furnished with not fewer than two accurate copies of the plan or sketch
 9 and details for the purpose of ascertaining compliance with applicable fire prevention and protection
 10 statutes and regulations. The plan examiner shall indicate on the plan or sketch and in writing ap-
 11 proval or disapproval and conditions for approval of the construction or alteration. One copy of the
 12 plan or sketch shall be retained by the director and one copy shall be returned to the applicant.
 13 No building or structure referred to in subsection (2) of this section shall be erected or constructed
 14 without approval by the director if the building or structure requires [*approval by*] **consultation**
 15 **with** the State Fire Marshal. After such approval or issuance of the required permit, construction
 16 or alteration must comply with the plan or sketch in all respects unless modified by subsequent
 17 permit or order of the director.

18 (5) The approval of a plan or sketch may not be construed to be a permit for, or an approval
 19 of, any violation of any statute or regulation or the applicable ordinances and regulations of any
 20 governmental subdivision of the state. The approval of a plan or sketch may not be construed as
 21 an approval for noncompliance with fire marshal regulations. Any condition upon approval or dis-
 22 approval is an order subject to appeal as other orders are appealable.

23 (6) Notwithstanding the requirements of subsections (2) and (4) of this section, the State Fire
 24 Marshal may, by rule, require an additional copy of a plan or sketch for local government use and
 25 may specify that plans or sketches submitted for review be drawn clearly and to scale.

26 **SECTION 4.** ORS 479.195 is amended to read:

27 479.195. (1) All dance halls, clubs, amusement halls, auditoriums and every place of public as-
 28 sembly not having fixed seats and having a capacity of more than 100 persons shall post and keep
 29 posted a notice of the maximum number of persons allowed at any one time as established by regu-
 30 lations of the State Fire Marshal or by the approved authority when such public assemblies are lo-
 31 cated within the jurisdiction of a governmental subdivision granted the exemption provided by ORS
 32 476.030 [(3)] (7). All such capacity notices shall be on a form approved or provided by the State Fire
 33 Marshal and shall be securely fixed and posted in a conspicuous place so as to be readily visible to
 34 the occupants of such place of assembly.

35 (2) If the State Fire Marshal, or deputies, assistants as defined in ORS 476.060, or the approved
 36 authority, as provided by ORS 476.030 [(3)] (7), upon examination or inspection finds a building or
 37 other structure described in subsection (1) of this section, to be occupied by a number of persons in
 38 excess of the maximum number of persons allowed at any one time as set forth in the capacity no-
 39 tice, the State Fire Marshal, or deputies, assistants as defined in ORS 476.060, or the approved au-
 40 thority, as provided in ORS 476.030 [(3)] (7), may close the building or other structure for use or
 41 occupancy until compliance has been made.

42 (3) The owner of any building or other structure closed under subsection (2) of this section shall
 43 have immediate access to the circuit court for the county in which the building or other structure
 44 is located for review of the order of exclusion or removal. Such access may be in the form of any
 45 appropriate judicial proceeding and shall be given priority over all other cases on the docket of the

1 circuit court.

2 (4) The closure provided for in subsection (2) of this section shall not exclude any other reme-
 3 dies available to the State Fire Marshal, deputies, or approved authority, as provided by ORS
 4 476.030 [(3)] (7).

5 **SECTION 5.** ORS 479.295 is amended to read:

6 479.295. *[Notwithstanding the provisions of ORS 476.030,]* The State Fire Marshal shall adopt,
 7 by rule:

8 (1) Standards for the installation and maintenance of smoke alarms and smoke detectors as the
 9 State Fire Marshal considers necessary to carry out the purposes of ORS 479.250 to 479.305; and

10 (2) Standards for the implementation of ORS 479.250 to 479.305 and 479.990 (5).

11 **SECTION 6.** ORS 480.160 is amended to read:

12 480.160. (1) Nothing in ORS 480.110 to 480.165, nor in any permit issued thereunder, shall au-
 13 thorize the manufacture, sale, use or discharge of fireworks or items described in ORS 480.127 in
 14 any city, county or fire protection district in which such manufacture, sale, use or discharge is
 15 otherwise prohibited by law or municipal ordinance; nor shall any city, county or fire protection
 16 district authorize the sale or use of any fireworks prohibited by the provisions of ORS 480.110 to
 17 480.165.

18 (2) For the purposes of enforcing ORS 480.110 to 480.165 in an area exempt under ORS 476.030
 19 [(3)] (7) within a rural fire protection district, the fire marshal, if there is one, or the fire chief of
 20 that rural fire protection district has the same enforcement authority as the State Fire Marshal.

21 (3) No person shall deliver or cause to be delivered into any county, municipality or rural fire
 22 protection district for the purpose of sale to individual members of the general public for personal
 23 use any items described in ORS 480.127 if the county, municipality or rural fire protection district
 24 by law or ordinance has declared that the sale or use of such items is prohibited.

25 (4) The manufacture, sale, use or discharge of fireworks or items described in ORS 480.127 may
 26 be regulated by the governing body of a rural fire protection district, subject to the following con-
 27 ditions:

28 (a) The regulation must be by ordinance adopted by the governing body of the district, after
 29 public notice and hearing, not later than January 1 of any calendar year in which regulation is to
 30 be operative.

31 (b) The regulation shall not be operative within the boundaries of any city that regulates such
 32 matters by city ordinance.

33 (c) The regulation shall not prohibit the manufacture, sale, use or discharge of fireworks or
 34 items referred to in ORS 480.127, the manufacture, sale, use or discharge of which is authorized by
 35 ORS 480.110 to 480.165.

36 (d) The regulation may not limit sales to less than five days per calendar year, and must include
 37 the five consecutive day period beginning June 30.

38 **SECTION 7.** ORS 480.450 is amended to read:

39 480.450. (1) The installer shall notify the State Fire Marshal, before the last day of each month,
 40 of all new installations made during the preceding month of containers or receptacles for liquefied
 41 petroleum gas, including installations for private homes and apartments. The installer shall certify
 42 on a form provided by the State Fire Marshal that all of the new installations are duly and properly
 43 reported. The State Fire Marshal may require that the notification include the location and de-
 44 scription of the installation and the name of the user. All fees due and payable must accompany the
 45 notification. The replacement of empty containers or receptacles with other containers constructed

1 in accordance with United States Department of Transportation specifications is not a new instal-
2 lation or change in the original installation that requires notification to the State Fire Marshal or
3 necessitates further inspection of the installation. The State Fire Marshal shall collect from the in-
4 staller an installation fee of \$45 for each tank installed or for all tanks at the installation if the total
5 combined capacity is 200 gallons or less. The State Fire Marshal or deputies of the fire marshal or
6 assistants shall inspect a reasonable number of the installations and maintain a record of the in-
7 spections in the office of the State Fire Marshal.

8 (2) In addition to any installation or inspection fee, the State Fire Marshal may charge a plan
9 review fee, not to exceed \$100, for any liquefied petroleum gas container and receptacle plan review
10 required under a uniform fire code prescribed by the State Fire Marshal by rule.

11 (3) After the initial installation, liquefied petroleum gas containers may be inspected once every
12 10 years except when changes have been made in the original installation. An installer making
13 changes must notify the State Fire Marshal of the changes in the same manner provided in this
14 section for new installations. The State Fire Marshal shall collect from the owner a fee of \$45 for
15 the inspection of each container. The manner of inspection, requirement of corrections, satisfaction
16 of requirements and collection of fees due and payable must conform with the provisions of ORS
17 480.410 to 480.460 for new installations. Upon request of the State Fire Marshal, LP gas installation
18 licensees shall furnish a list of the locations of 10-year old installations that they service.

19 (4) If, upon inspection of any tank, the new installation does not comply with the requirements
20 of the State Fire Marshal, the State Fire Marshal shall instruct the installer as to what corrections
21 are necessary for compliance with the State Fire Marshal's requirements. The installer of the new
22 installation shall, within the time set by the State Fire Marshal, not to exceed 60 days after notifi-
23 cation, notify the State Fire Marshal that the new installation complies with the requirements of the
24 fire marshal. If the installer fails to notify the State Fire Marshal, or the State Fire Marshal has
25 reason to believe that the corrections have not been made, the State Fire Marshal shall reinspect
26 the new installation and shall collect from the installer an additional fee of \$100. The user, not the
27 installer, shall pay the additional fee resulting from actions of the user that require correction to
28 achieve compliance with the requirements of the State Fire Marshal.

29 (5) A person who receives notice from the State Fire Marshal must correct any improper in-
30 stallation within the time set by the State Fire Marshal, not to exceed 60 days after receipt of the
31 notice.

32 (6) If the fees provided for in this section are due and payable and are not paid within 30 days
33 after service of written notice by the State Fire Marshal therefor, or if the installer fails to notify
34 the State Fire Marshal by the last day of the month succeeding the month a new installation is made
35 or a change is made requiring an inspection, the fees are delinquent and a penalty equal to the
36 greater of 10 percent of the fee amount or \$30, is imposed for the delinquency. The State Fire
37 Marshal shall collect all fees and penalties in the name of the State of Oregon in the same manner
38 that other debts are collected.

39 (7) The provisions of this section do not apply to liquefied petroleum gas installations if made
40 entirely within the jurisdiction of a governmental subdivision granted the exemption provided by
41 ORS 476.030 [(3)] (7) and written evidence of the licensing of the installation by the approved au-
42 thority is submitted to the State Fire Marshal. The provisions of this section do not apply to LP gas
43 installations made in manufactured dwellings or recreational vehicles that are constructed or al-
44 tered in accordance with applicable rules of the Department of Consumer and Business Services.

45 **SECTION 8.** ORS 480.450, as amended by section 10, chapter 790, Oregon Laws 2009, is

1 amended to read:

2 480.450. (1) The installer shall notify the State Fire Marshal, before the last day of each month,
3 of all new installations made during the preceding month of containers or receptacles for liquefied
4 petroleum gas, including installations for private homes and apartments. The installer shall certify
5 on a form provided by the State Fire Marshal that all of the new installations are duly and properly
6 reported. The State Fire Marshal may require that the notification include the location and de-
7 scription of the installation and the name of the user. All fees due and payable must accompany the
8 notification. The replacement of empty containers or receptacles with other containers constructed
9 in accordance with United States Department of Transportation specifications is not a new instal-
10 lation or change in the original installation that requires notification to the State Fire Marshal or
11 necessitates further inspection of the installation. The State Fire Marshal shall collect from the in-
12 staller an installation fee of \$50 for each tank installed or for all tanks at the installation if the total
13 combined capacity is 200 gallons or less. The State Fire Marshal or deputies of the fire marshal or
14 assistants shall inspect a reasonable number of the installations and maintain a record of the in-
15 spections in the office of the State Fire Marshal.

16 (2) In addition to any installation or inspection fee, the State Fire Marshal may charge a plan
17 review fee, not to exceed \$100, for any liquefied petroleum gas container and receptacle plan review
18 required under a uniform fire code prescribed by the State Fire Marshal by rule.

19 (3) After the initial installation, liquefied petroleum gas containers may be inspected once every
20 10 years except when changes have been made in the original installation. An installer making
21 changes must notify the State Fire Marshal of the changes in the same manner provided in this
22 section for new installations. The State Fire Marshal shall collect from the owner a fee of \$50 for
23 the inspection of each container. The manner of inspection, requirement of corrections, satisfaction
24 of requirements and collection of fees due and payable must conform with the provisions of ORS
25 480.410 to 480.460 for new installations. Upon request of the State Fire Marshal, LP gas installation
26 licensees shall furnish a list of the locations of 10-year old installations that they service.

27 (4) If, upon inspection of any tank, the new installation does not comply with the requirements
28 of the State Fire Marshal, the State Fire Marshal shall instruct the installer as to what corrections
29 are necessary for compliance with the State Fire Marshal's requirements. The installer of the new
30 installation shall, within the time set by the State Fire Marshal, not to exceed 60 days after notifi-
31 cation, notify the State Fire Marshal that the new installation complies with the requirements of the
32 fire marshal. If the installer fails to notify the State Fire Marshal, or the State Fire Marshal has
33 reason to believe that the corrections have not been made, the State Fire Marshal shall reinspect
34 the new installation and shall collect from the installer an additional fee of \$125. The user, not the
35 installer, shall pay the additional fee resulting from actions of the user that require correction to
36 achieve compliance with the requirements of the State Fire Marshal.

37 (5) A person who receives notice from the State Fire Marshal must correct any improper in-
38 stallation within the time set by the State Fire Marshal, not to exceed 60 days after receipt of the
39 notice.

40 (6) If the fees provided for in this section are due and payable and are not paid within 30 days
41 after service of written notice by the State Fire Marshal therefor, or if the installer fails to notify
42 the State Fire Marshal by the last day of the month succeeding the month a new installation is made
43 or a change is made requiring an inspection, the fees are delinquent and a penalty equal to the
44 greater of 10 percent of the fee amount or \$30, is imposed for the delinquency. The State Fire
45 Marshal shall collect all fees and penalties in the name of the State of Oregon in the same manner

1 that other debts are collected.

2 (7) The provisions of this section do not apply to liquefied petroleum gas installations if made
3 entirely within the jurisdiction of a governmental subdivision granted the exemption provided by
4 ORS 476.030 [(3)] (7) and written evidence of the licensing of the installation by the approved au-
5 thority is submitted to the State Fire Marshal. The provisions of this section do not apply to LP gas
6 installations made in manufactured dwellings or recreational vehicles that are constructed or al-
7 tered in accordance with applicable rules of the Department of Consumer and Business Services.

8 **SECTION 9. The amendments to ORS 476.030, 478.920 and 479.155 by sections 1 to 3 of this**
9 **2011 Act do not invalidate or prevent the enforcement of any order that the State Fire**
10 **Marshal or a local fire marshal issued prior to the effective date of this 2011 Act.**

11