

# House Bill 2572

Sponsored by Representative MARSH, Senator DEMBROW; Representatives HELM, REARDON, Senators FREDERICK, 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**.

Provides that spread of fire in forestland across ownership boundary does not constitute prima facie evidence of fire burning uncontrolled if owners or operators of forestland on both sides of ownership boundary agree in advance to conduct prescribed fire.

Provides that owner or operator of forestland on which prescribed fire exists need not extinguish fire if owners or operators of forestland on both sides of ownership boundary agree in advance of fire that fire may be conducted as prescribed fire and fire remains on forestland of owners or operators that agreed to fire. Prohibits State Forester from determining that fire that spreads across ownership boundary is burning uncontrolled if owners or operators of forestland on both sides of boundary agree in advance to conduct prescribed fire and fire remains on forestland of owners or operators that agreed to fire.

Provides that person does not commit offense of unlawful use of fire if person has knowledge of prescribed fire burning on person's own land and does not extinguish prescribed fire.

Requires State Board of Forestry, by December 1, 2021, to consult with Oregon Prescribed Fire Council concerning best practices for conducting Certified Burn Manager program, to initiate rulemaking to establish program and to report to appropriate committee or subcommittee of Legislative Assembly on progress in establishing and implementing program.

Appropriates moneys to board for purpose of establishing and implementing program.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to prescribed fires; creating new provisions; amending ORS 477.064, 477.066, 477.740 and  
3 526.360; and prescribing an effective date.

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

5 **SECTION 1.** ORS 477.064 is amended to read:

6 477.064. (1) Any fire on any forestland in Oregon burning uncontrolled or without proper action  
7 being taken to prevent its spread, notwithstanding its origin, is declared a public nuisance by reason  
8 of its menace to life, forest resources or property.

9 (2) The spread of fire in forestland across an ownership boundary is prima facie evidence of fire  
10 burning uncontrolled, **unless the owners or operators of the forestland on both sides of the**  
11 **ownership boundary jointly agree in advance that the fire may be conducted as a prescribed**  
12 **fire.**

13 **SECTION 2.** ORS 477.066 is amended to read:

14 477.066. (1) Each owner and operator of forestland on which a fire exists or from which it may  
15 have spread, notwithstanding the origin or subsequent spread thereof, shall immediately proceed to  
16 control and extinguish such fire when its existence comes to the knowledge of the owner or opera-  
17 tor, without awaiting instructions from the forester, and shall continue until the fire is extinguished.  
18 **However, the owner or operator of forestland on which a prescribed fire exists need not ex-**  
19 **tinguish the fire if:**

20 (a) **The owners or operators agree in advance of the fire that the fire may be conducted**  
21 **as a prescribed fire as described in ORS 477.064; and**

**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.

**(b) The fire remains on the forestland of the owners or operators that agreed to the fire.**

(2)(a) If the forester determines **either that** the fire is [*either*] burning uncontrolled or **that** the owner or operator does not then have readily and immediately available personnel and equipment to control or extinguish the fire, the forester, or any forest protective association or agency under contract or agreement with the State Board of Forestry for the protection of forestland against fire, and within whose protection area the fire exists, shall summarily abate the nuisance thus constituted by controlling and extinguishing the fire.

**(b) If a fire is burning as a prescribed fire under circumstances described in subsection (1)(a) and (b) of this section, the forester may not determine that the spread of fire across an ownership boundary demonstrates that the fire is burning uncontrolled.**

(3) An owner may request in writing that the forester employ alternate fire prevention and suppression strategies or techniques on the owner's forestland. The forester may employ some or all of the requested strategies or techniques when, in the judgment of the forester, conditions warrant the use of the alternate strategies or techniques.

**SECTION 3.** ORS 477.740 is amended to read:

477.740. A person commits the offense of unlawful use of fire if the person:

(1) In the ignition of a fire:

(a) Unlawfully sets on fire, or causes to be set on fire, any grass, grain, stubble or other material being or growing on any lands within the state;

(b) Intentionally or negligently allows fire to escape from the person's own land, or land of which the person is in possession or control; or

(c) Accidentally sets any fire on the person's own land or the land of another and allows it to escape from control without extinguishing it, or making a bona fide effort to do so.

(2) Having knowledge of a fire burning on the person's own land, or land of which the person is in possession or control, fails or neglects to make a bona fide effort to extinguish the same, regardless of whether or not the person is responsible for the starting or existence thereof, **unless the fire is a prescribed fire.**

**SECTION 4.** ORS 526.360 is amended to read:

526.360. (1) The State Board of Forestry and the [*forester*] **State Forester** may assist to the extent possible in developing, for forestry, grazing or agricultural uses, all forestland classified pursuant to ORS 526.328 or 526.340 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, the forester 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

1 the forester may require while there is danger of the fire spreading. The forester may refuse to  
 2 perform or supervise burning or to issue any burning permit when, in the judgment of the forester,  
 3 conditions so warrant.

4 (3) To accomplish the purposes set forth in subsection (1) of this section, the [*State Board of*  
 5 *Forestry may*] **board shall** establish by rule a Certified Burn Manager program.

6 (4) The rules **required by subsection (3) of this section** shall include:

7 (a) Certification standards, requirements and procedures;

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

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

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

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

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

14 (5) **The rules required by subsection (3) of this section may establish and impose fees for**  
 15 **participation in the program.**

16 [(4)] (6) When [*any*] a burning for any of the purposes stated in subsection (1) of this section on  
 17 forestland classified pursuant to ORS 526.328 or 526.340 is started under the supervision of and  
 18 supervised by the forester or a Certified Burn Manager, [*no*] a person [*shall*] **may not be held** liable  
 19 for property damage resulting from that burning unless the damage is caused by the negligence of  
 20 the person.

21 (7) **When a burning is started under the supervision of a Certified Burn Manager, the**  
 22 **forester may assess against a person who started the burning fire suppression costs that are**  
 23 **less than or equal to the amount of fire suppression costs described in ORS 477.120 (4).**

24 **SECTION 5. By December 1, 2021, the State Board of Forestry shall:**

25 (1) **Consult with the Oregon Prescribed Fire Council concerning best practices for con-**  
 26 **ducting the Certified Burn Manager program described in ORS 526.360;**

27 (2) **Initiate rulemaking to establish the program; and**

28 (3) **Report in the manner provided in ORS 192.245 to an appropriate committee or sub-**  
 29 **committee of the Legislative Assembly on progress the board has made in establishing and**  
 30 **implementing the program and when the board expects to launch the program.**

31 **SECTION 6. There is appropriated to the State Board of Forestry, for the biennium be-**  
 32 **ginning July 1, 2021, out of the General Fund, the amount of \$\_\_\_\_\_ for the purpose of**  
 33 **establishing and implementing the Certified Burn Manager program described in ORS 526.360.**

34 **SECTION 7. This 2021 Act takes effect on the 91st day after the date on which the 2021**  
 35 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**