

Requested by Representative RAYFIELD

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 80
(INCLUDING AMENDMENTS TO RESOLVE CONFLICTS)**

1 On page 1 of the printed A-engrossed bill, line 3, after “477.490” delete the
2 rest of the line and insert “, 477.748 and 526.360 and sections 11 and 12d,
3 chapter 592, Oregon Laws”.

4 On page 2, line 7, delete “four” and insert “three”.

5 In line 8, delete “extreme,”.

6 In line 19, delete “an extreme or” and insert “the”.

7 In line 21, delete “an extreme or” and insert “the”.

8 In line 22, delete “extreme or”.

9 In line 35, delete “extreme or” and insert “the” and delete “zones” and
10 insert “zone”.

11 On page 4, line 5, delete “CLASSES OF” and after “INTERFACE” insert
12 “CRITERIA”.

13 Delete lines 7 through 18 and insert:

14 **“SECTION 2.** ORS 477.027 is amended to read:

15 “477.027. (1) By rule, considering national best practices, the State Board
16 of Forestry shall establish:

17 “(a) A definition of ‘wildland-urban interface.’

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

20 “(2) The criteria:

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

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

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

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

9 In line 45, delete “extreme or high risk” and insert “being in the high
10 wildfire hazard zone”.

11 On page 8, delete lines 35 through 45.

12 On page 9, delete lines 1 through 22.

13 Delete lines 26 through 45.

14 On page 10, delete lines 1 through 44 and insert:

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

18 “215.495. (1) As used in this section:

19 “(a) ‘Accessory dwelling unit’ has the meaning given that term in ORS
20 215.501.

21 “(b) ‘Area zoned for rural residential use’ has the meaning given that
22 term in ORS 215.501.

23 “(c) ‘Single-family dwelling’ has the meaning given that term in ORS
24 215.501.

25 “(2) Consistent with a county’s comprehensive plan, a county may allow
26 an owner of a lot or parcel within an area zoned for rural residential use to
27 construct one accessory dwelling unit on the lot or parcel, provided:

28 “(a) The lot or parcel is not located within an area designated as an ur-
29 ban reserve as defined in ORS 195.137;

30 “(b) The lot or parcel is at least two acres in size;

- 1 “(c) One single-family dwelling is sited on the lot or parcel;
- 2 “(d) The existing single-family dwelling property on the lot or parcel is
3 not subject to an order declaring it a nuisance or subject to any pending
4 action under ORS 105.550 to 105.600;
- 5 “(e) The accessory dwelling unit will comply with all applicable laws and
6 regulations relating to sanitation and wastewater disposal and treatment;
- 7 “(f) The accessory dwelling unit will not include more than 900 square
8 feet of usable floor area;
- 9 “(g) The accessory dwelling unit will be located no farther than 100 feet
10 from the existing single-family dwelling;
- 11 “(h) If the water supply source for the accessory dwelling unit or associ-
12 ated lands or gardens will be a well using water under ORS 537.545 (1)(b)
13 or (d), no portion of the lot or parcel is within an area in which new or ex-
14 isting ground water uses under ORS 537.545 (1)(b) or (d) have been restricted
15 by the Water Resources Commission;
- 16 “(i) No portion of the lot or parcel is within a designated area of critical
17 state concern;
- 18 “(j) The lot or parcel is served by a fire protection service provider with
19 professionals who have received training or certification described in ORS
20 181A.410;
- 21 “(k) If the lot or parcel is in an area identified on the [*statewide map of*
22 *wildfire risk*] **statewide wildfire hazard map** described in ORS 477.490 as
23 within the wildland-urban interface, the lot or parcel and accessory dwelling
24 unit comply with any applicable minimum defensible space requirements for
25 wildfire risk reduction established by the State Fire Marshal under ORS
26 476.392 and any applicable local requirements for defensible space established
27 by a local government pursuant to ORS 476.392;
- 28 “(L) The accessory dwelling unit complies with the construction pro-
29 visions of section R327 of the Oregon Residential Specialty Code, if:
- 30 “(A) The lot or parcel is in an area identified as [*extreme or high wildfire*

1 *risk*] a **high wildfire hazard zone** on the [*statewide map of wildfire risk*]
2 **statewide wildfire hazard map** described in ORS 477.490; or

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

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

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

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

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

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

18 “(4) A county that allows construction of an accessory dwelling unit un-
19 der this section may not approve:

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

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

25 “(5) A county may require that an accessory dwelling unit constructed
26 under this section be served by the same water supply source or water supply
27 system as the existing single-family dwelling, provided such use is allowed
28 for the accessory dwelling unit by an existing water right or a use under
29 ORS 537.545. If the accessory dwelling unit is served by a well, the con-
30 struction of the accessory dwelling unit shall maintain all setbacks from the

1 well required by the Water Resources Commission or Water Resources De-
2 partment.

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

6 “(7) Nothing in this section requires a county to allow any accessory
7 dwelling units in areas zoned for rural residential use or prohibits a county
8 from imposing any additional restrictions on accessory dwelling units in
9 areas zoned for rural residential use, including restrictions on the con-
10 struction of garages and outbuildings that support an accessory dwelling
11 unit.”.

12 In line 45, delete “11” and insert “10”.

13 On page 11, line 6, delete “12” and insert “11”.

14 In line 7, delete “extreme and” and insert “the” and delete “zones” and
15 insert “zone”.

16 In line 8, delete “are” and insert “is”.

17 In line 17, delete “13” and insert “12”.

18 In line 30, delete “extreme or” and insert “the”.

19 In line 31, delete “zones” and insert “zone”.

20 After line 39, insert:

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

23 **“Sec. 11.** (1) As used in this section, ‘defensible space’ has the meaning
24 given that term in ORS 476.390.

25 “(2) The Department of Land Conservation and Development shall identify
26 recommended changes to the statewide land use planning program and local
27 comprehensive plans and zoning codes that are needed in order to incorpo-
28 rate wildfire [*risk*] **hazard** maps and minimize wildfire risk, including the
29 appropriate levels of state and local resources necessary for effective imple-
30 mentation.

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

5 “(4) On or before October 1, 2022, the department shall report to a com-
6 mittee or interim committee of the Legislative Assembly related to wildfire,
7 in the manner provided in ORS 192.245, to the State Wildfire Programs Di-
8 rector and to the Wildfire Programs Advisory Council on the changes re-
9 commended by the department.

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

13

14

“PRESCRIBED FIRES

15

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

17 **“(a) ‘Cultural burn’ means the intentional application of fire to land**
18 **by an Indian tribe or cultural fire practitioner to achieve cultural**
19 **goals or objectives identified by a tribal ordinance, traditional tribal**
20 **custom or law of an Indian tribe, such as subsistence, ceremonial ac-**
21 **tivities, biodiversity or other benefits.**

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

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

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

30 **“(3) Notwithstanding subsection (2) of this section, the Department**

1 of Consumer and Business Services shall administer reimbursements
2 for claims under the program.

3 “(4) The program must be administered to:

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

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

8 “(c) Support coverage for losses from prescribed fires and cultural
9 burning by nonpublic entities such as cultural fire practitioners, pri-
10 vate landowners, nongovernmental entities, Certified Burn Managers
11 as defined in ORS 526.005, companies, contractors and operators.

12 “(d) Support nonpublic entities, such as cultural fire practitioners,
13 private landowners, nongovernmental entities, Certified Burn Manag-
14 ers, companies, contractors and operators, that are alleged to have
15 caused damages resulting from prescribed fires or cultural burning.

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

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

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

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

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

30 “(a) The State Forester, a forest protective association, a rangeland

1 protection association or a Certified Burn Manager reviewed and ap-
2 proved a burn plan before the prescribed fire or cultural burning;

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

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

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

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

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

16 “(8) The State Forestry Department:

17 “(a) Shall consult with other relevant state agencies, cultural fire
18 practitioners, the State Forester, forest protective associations,
19 rangeland protection associations and Certified Burn Managers to es-
20 tablish guidelines for the program.

21 “(b) Shall adopt the guidelines by rule.

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

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

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

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

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

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

7 “(10) Notwithstanding any other provision of law, the state’s liabil-
8 ity for all claims under this section and the guidelines developed by
9 the State Forestry Department pursuant to subsection (8) of this sec-
10 tion, shall be limited as described in this section and to the amount
11 in the Prescribed Fire Claims Fund established by section 15 of this
12 2023 Act.

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

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

17 “SECTION 15. (1) There is established in the State Treasury, sepa-
18 rate and distinct from the General Fund, the Prescribed Fire Claims
19 Fund. Interest earned by the fund shall be credited to the fund. All
20 moneys in the fund are continuously appropriated to the Department
21 of Consumer and Business Services for the program described in sec-
22 tion 14 of this 2023 Act.

23 “(2) The fund shall consist of all moneys credited to the fund, in-
24 cluding moneys appropriated or transferred to the fund by the Legis-
25 lative Assembly.

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

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

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

6 **“(3) Any moneys in the Prescribed Fire Claims Fund that are un-**
7 **expended and unobligated on the date of the repeal of sections 14 and**
8 **15 of this 2023 Act by subsection (1) of this section shall revert to the**
9 **General Fund.**

10 **“(4) The Department of Consumer and Business Services shall de-**
11 **termine the amount of unexpended and unobligated moneys described**
12 **in subsection (3) of this section, based on the amount remaining in the**
13 **fund and the number of claims described in subsection (2) of this sec-**
14 **tion.**

15 **“SECTION 17. (1) On or before April 1, 2028, in consultation with**
16 **the Department of Consumer and Business Services, the State**
17 **Forestry Department shall report to the Governor and to a committee**
18 **or interim committee of the Legislative Assembly related to natural**
19 **resources, in the manner prescribed in ORS 192.245, on the perform-**
20 **ance of the Prescribed Fire Liability Pilot Program described in section**
21 **14 of this 2023 Act.**

22 **“(2) The report must include:**

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

25 **“(b) The total costs of claims paid.**

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

29 **“(d) Recommendations for revising the program and improving ad-**
30 **ministration of the program if sections 14 and 15 of this 2023 Act are**

1 **not repealed on January 2, 2028, pursuant to section 16 of this 2023 Act.**

2 **“SECTION 18.** ORS 526.360 is amended to read:

3 “526.360. (1) The State Board of Forestry, the State Forester and forest
4 protective associations may assist to the extent practical in developing, for
5 forestry, grazing or agricultural uses, [*all forestland classified pursuant to*
6 *ORS 526.328 or 526.340*] **lands within a forest protection district, as de-**
7 **scribed in ORS 477.205 to 477.281,** for such uses, including the burning of
8 brush or other flammable material for the purpose of:

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

10 “(b) Preparing seed beds;

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

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

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

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

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

30 “(3) To accomplish the purposes set forth in subsection (1) of this section,

1 the board shall establish by rule a Certified Burn Manager program.

2 “(4) The rules shall include:

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

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

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

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

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

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

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

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

20 In line 41, delete “APPROPRIATION” and insert “APPROPRIATIONS”.

21 Delete lines 43 through 45.

22 On page 12, delete line 1 and insert:

23 **“SECTION 19. In addition to and not in lieu of any other appropri-
24 ation, there is appropriated to the Department of the State Fire Mar-
25 shal, for the biennium beginning July 1, 2023, out of the General Fund,
26 the amount of \$3,000,000, for deposit in the Community Risk Reduction
27 Fund established under ORS 476.396.**

28 **“SECTION 20. Notwithstanding any other law limiting expenditures,
29 the amount of \$3,000,000 is established, for the biennium beginning
30 July 1, 2023, as the maximum limit for payment of expenses by the**

1 Department of the State Fire Marshal for community risk reduction
2 activities funded through the Community Risk Reduction Fund estab-
3 lished under ORS 476.396.

4 **“SECTION 21.** Notwithstanding any other provision of law, the
5 General Fund appropriation made to the State Forestry Department
6 by section 1 (3), chapter __, Oregon Laws 2023 (Enrolled House Bill
7 5020), for the biennium beginning July 1, 2023, for the planning branch,
8 is increased by \$350,000, for implementing the amendments to ORS
9 477.490 and 477.027 by sections 1 and 2 of this 2023 Act.

10 **“SECTION 22.** Notwithstanding any other provision of law, the
11 General Fund appropriation made to the Higher Education Coordinat-
12 ing Commission by section 1 (9), chapter __, Oregon Laws 2023 (En-
13 rolled House Bill 5025), for the biennium beginning July 1, 2023, for
14 public university statewide programs, is increased by \$846,173, for im-
15 plementing the amendments to ORS 477.490 by section 1 of this 2023
16 Act.

17 **“SECTION 23.** Notwithstanding any other provision of law, the
18 General Fund appropriation made to the Higher Education Coordinat-
19 ing Commission by section 1 (10), chapter __, Oregon Laws 2023 (En-
20 rolled House Bill 5025), for the biennium beginning July 1, 2023, for
21 statewide public services, is increased by \$30,000, for implementing the
22 amendments to ORS 477.490 by section 1 of this 2023 Act.

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

28 **“SECTION 25.** Notwithstanding any other law limiting expenditures,
29 the amount of \$5,000,000 is established for the biennium beginning July
30 1, 2023, as the maximum limit for payment of expenses by the De-

1 **partment of Consumer and Business Services from the Prescribed Fire**
2 **Claims Fund established by section 15 of this 2023 Act.**

3 **“SECTION 26. Notwithstanding any other provision of law, the**
4 **General Fund appropriation made to the State Forestry Department**
5 **by section 1 (2), chapter __, Oregon Laws 2023 (Enrolled House Bill**
6 **5020), for the biennium beginning July 1, 2023, for forest resources, is**
7 **increased by \$242,037, for the administration of the Prescribed Fire**
8 **Liability Pilot Program described in section 14 of this 2023 Act.”.**

9 In line 5, delete “15” and insert “27”.

10 In line 11, delete “16” and insert “28”.

11
