

Enrolled House Bill 4016

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Climate, Energy, and Environment for Representative Pam Marsh)

CHAPTER

AN ACT

Relating to natural resources; creating new provisions; amending ORS 468A.836 and sections 14 and 15, chapter 611, Oregon Laws 2023; and prescribing an effective date.

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

PRESCRIBED FIRE LIABILITY PILOT PROGRAM

SECTION 1. Section 14, chapter 611, Oregon Laws 2023, is amended to read:

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

(a) "Cultural burn" means the intentional application of fire to land by an Indian tribe or cultural fire practitioner to achieve cultural goals or objectives identified by a tribal ordinance, traditional tribal custom or law of an Indian tribe, such as subsistence, ceremonial activities, biodiversity or other benefits.

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

(c) "Indian tribe" means a federally recognized Indian tribe in Oregon.

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

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

(4) The program must be administered to:

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

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

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

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

(5) Under the program, the Department of Consumer and Business Services may reimburse [claims related to] **a claim that meets the following criteria:**

(a) **The claim relates to:**

[(a)] (A) A prescribed fire conducted or supervised by the State Forester, a forest protective association or a rangeland protection association, pursuant to ORS 477.315 to 477.325[.];

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

[(c)] (C) A cultural burn conducted or supervised by a cultural fire practitioner[.];

(b) The claim relates to a prescribed fire or cultural burn conducted in accordance with the provisions of any applicable burn plan or permit and any other applicable conditions or requirements;

(c) The claim is:

(A) For economic and property damage, as defined in ORS 477.089, suffered by the claimant as a result of the prescribed fire or cultural burn; or

(B) If the claimant is the State Forester or a forest protective association or agency, for the actual costs incurred by the claimant in controlling or extinguishing the prescribed fire or cultural burn, but only to the extent that such costs would be recoverable from an owner or operator of forestland pursuant to ORS 477.068 and 477.120; and

(d) The claimant was not willful, malicious or negligent in the origin or subsequent spread of the prescribed fire or cultural burn.

(6) The Department of Consumer and Business Services may *[only]* reimburse a claim *[for recoverable damages, as described in ORS 477.089 (2), or for actual costs, as described in ORS 477.068, subject to the provisions of ORS 477.120, if:]* **under the program only if the State Forestry Department certifies that the claim meets the criteria described in subsection (5) of this section.**

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

[(b) Any necessary permit was obtained before the prescribed fire or cultural burning was conducted;]

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

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

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

(7)(a) [The limitations imposed by ORS 30.271 apply to claims under this section] The amount paid from the Prescribed Fire Claims Fund established by section 15, chapter 611, Oregon Laws 2023, for any claim for losses arising from a prescribed fire or cultural burn may not exceed \$1,000,000.

(b) Notwithstanding any other provision of law:

(A) The amount paid for all claims under the program may not exceed the amount in the fund.

(B) Awards for claims under the program may be reduced if moneys in the fund are insufficient to pay the claims.

(C) This section does not limit the ability of a person to assert a claim for losses arising from a prescribed fire or cultural burn under any other law in lieu of asserting a claim under this section.

(8) The State Forestry Department:

(a) Shall consult with other relevant state agencies, cultural fire practitioners, *[the State Forester,]* forest protective associations, rangeland protection associations and Certified Burn Managers to establish guidelines for the program.

(b) Shall adopt the guidelines by rule.

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

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

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

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

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

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

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

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

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

SECTION 2. Section 15, chapter 611, Oregon Laws 2023, is amended to read:

Sec. 15. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Prescribed Fire Claims Fund. Interest earned by the fund shall be credited to the fund. All moneys in the fund are continuously appropriated to the Department of Consumer and Business Services for the program described in section 14 *[of this 2023 Act]*, **chapter 611, Oregon Laws 2023.**

(2) The fund shall consist of all moneys credited to the fund, including moneys appropriated or transferred to the fund by the Legislative Assembly.

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

FIRE HARDENING GRANT PROGRAM

SECTION 3. The Department of Consumer and Business Services shall allow a person to apply for a grant under the Fire Hardening Grant Program on or before December 31, 2025.

SECTION 4. Section 3 of this 2024 Act is repealed on January 2, 2026.

SECTION 5. On or before September 15, 2024, the Department of Consumer and Business Services and the Department of the State Fire Marshal shall report, in the manner prescribed in ORS 192.245, to committees or interim committees of the Legislative Assembly related to natural resources on a proposal for a proactive home hardening program.

HEALTH SYSTEMS FOR SMOKE

SECTION 6. ORS 468A.836 is amended to read:

468A.836. (1) The Department of Environmental Quality shall establish and implement a program to support communities across this state in monitoring, interpreting and communicating data related to ambient air quality conditions caused by *[wildfire]* smoke.

(2) As part of the program, the department shall:

(a) Conduct community outreach in areas of this state that are prone to poor air quality attributable to *[elevated levels of particulate matter]* **smoke events.**

(b) Deploy air quality monitoring equipment in a manner sufficient to evaluate *[an increased prevalence of poor air quality attributable to elevated levels of particulate matter]* **smoke events.**

(c) Monitor meteorological conditions in a manner sufficient to forecast *[occurrences of poor air quality]* **smoke impacts.**

CAPTIONS

SECTION 7. The unit captions used in this 2024 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2024 Act.

EFFECTIVE DATE

SECTION 8. This 2024 Act takes effect on the 91st day after the date on which the 2024 regular session of the Eighty-second Legislative Assembly adjourns sine die.

Passed by House February 21, 2024

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate March 5, 2024

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Rob Wagner, President of Senate

Received by Governor:

.....M,....., 2024

Approved:

.....M,....., 2024

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2024

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LaVonne Griffin-Valade, Secretary of State