

Wildfire Matters Review Committee

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Brooke Maddaford, Research Analyst
Alex Schatz, Fiscal Analyst

Office of Legislative Legal Services

Bob Lackner, Senior Attorney
Duane Gall, Senior Attorney
Kate Meyer, Senior Staff Attorney
Thomas Morris, Senior Attorney
Esther van Mourik, Senior Staff Attorney

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Wildfire Matters Review Committee Report to Legislative Council

Committee Charge

Pursuant to Senate Bill 13-082, the Wildfire Matters Review Committee is charged with reviewing and proposing legislation or other policy changes related to wildfire prevention, mitigation, and related matters, including public safety and forest health issues. In addition, the bill transferred to the committee any remaining powers, duties, and responsibilities delegated to the Lower North Fork Wildfire Commission by House Bill 12-1352. In passing SB 13-082, the General Assembly intended for the Wildfire Matters Review Committee to be a permanent interim committee through which the General Assembly reviews state policies and resources addressing wildfire prevention and mitigation and the successful implementation and execution of such policies; the committee sunsets on July 1, 2018.

Committee Activities

The committee met five times from August to October 2013. At all five meetings, the committee heard presentations from, and engaged in discussion with, representatives of various entities involved in wildfire prevention, mitigation, and response. These presentations and discussions covered a wide range of topics associated with wildfires, including efforts undertaken by the General Assembly to address wildfire issues in recent years; wildfire aviation response; forest health; insurance, reinsurance, and building codes in the wildland-urban interface; the effect of wildfires on watersheds; emergency notification and communications during emergencies; and real estate disclosures pertaining to wildfire hazards. Entities represented before the committee included:

- the Divisions of Fire Prevention and Control and Homeland Security and Emergency Management within the Department of Public Safety;
- the Department of Natural Resources;
- the Governor's Task Force on Wildfire Insurance and Forest Health;
- private wildfire aviation response companies;
- the U.S. Government Accountability Office;
- the Water Quality Control Division within the Department of Public Health and Environment;
- the Colorado Water Conservation Board;
- the Urban Drainage and Flood Control District;
- municipal utilities;
- Colorado Counties, Inc.;
- the Colorado Municipal League;
- the National Fire Protection Association;
- emergency first responders;
- the insurance industry;
- the Divisions of Insurance and Real Estate within the Department of Regulatory Agencies;
- the Colorado 9-1-1 Resource Center;
- the Nature Conservancy;
- the Governor's Wildland and Prescribed Fire Advisory Committee;

- the Colorado Association of Realtors; and
- the Special District Association.

The committee heard public testimony at two of its meetings, and spent time during other meetings undertaking organizational activities and considering draft legislation. Prior to the committee's final meeting, the committee held a joint meeting with the interim Water Resources Review Committee to hear presentations on watershed protection, wildfire mitigation, and forest management; review the draft bills for both committees; and discuss issues of shared mission.

Ten bills and two joint resolutions were drafted at the request of the committee, which ultimately approved nine bills and the two resolutions. Two bills, Bills A and D, were approved without prime sponsorship, since the committee member requesting that these bills be drafted resigned from the General Assembly, effective November 1. Legislative rules require that these bills have a prime sponsor in order to be forwarded to the General Assembly for introduction in the 2014 legislative session. Legislative rules further stipulate that any member of the General Assembly may sponsor these committee bills. As a result, the committee approved one bill, Bill I, conditional upon either Bill A or Bill D not being approved by the Legislative Council for lack of a prime sponsor. Topics covered during committee meetings and recommendations made by the committee are discussed below.

Land management practices. Various witnesses offered testimony concerning the difficulty of managing forest health and responding to wildfire given the patchwork of ownership and governmental jurisdictions involved. At a statewide scale, a majority of forested land is owned by the federal government, subject to federal environmental review and federal funding for most mitigation efforts. The committee received testimony from witnesses responsible for individual parcels of land adjacent to forested land owned by an absentee landowner or an owner who does not mitigate potential fire fuels, substantially diminishing the effectiveness of local efforts to address wildfire risk. As a possible tool to address wildfire hazard conditions on private property, the committee discussed abatement procedures employed by local governments to address noxious weeds and other nuisance conditions. These discussions resulted in Bill A, which extends local government authority to abate nuisance vegetation to specifically include trees.

Wildfire Insurance and Forest Health Tax Force. The committee received testimony and a report from the executive director of the Department of Regulatory Agencies, Barbara Kelley, who served as the chair of the Governor's Wildfire Insurance and Forest Health Task Force. The task force studied barriers to successful management of wildfire risk and provided recommendations for further action. Among its findings, the task force noted a study showing that relatively few homeowners were aware of the state's wildfire mitigation income tax deduction and that a tax credit, rather than a deduction, may be more beneficial to homeowners. Bill D makes this change.

Review of recent legislation. Legislative Council Staff briefed the committee on legislation enacted by the General Assembly in recent years involving wildfire and forest health issues. Many recently enacted bills have addressed funding for forest health initiatives and wildfire response, the extension of current programs, training for firefighters and fire managers, and the disposal and marketing of "beetle kill" timber. The committee noted that the income tax deduction extended by House Bill 13-1012 limits the actual tax savings available for wildfire mitigation to a small percentage of the taxpayer's investment. The committee also noted that this legislation did not address potential use of the bonding authority of the Colorado Water Resource and Power Development Authority for forest health projects undertaken by private landowners and nongovernmental stewardship organizations. Bill C extends this authority's ability to make loans to private entities.

Briefings by the Department of Public Safety. The committee received testimony from the Department of Public Safety, including briefings by Paul Cooke, director of the Division of Fire Prevention and Control, and Kevin Klein, director of the Division of Homeland Security and Emergency Management. Mr. Cooke and Commissioner Dan Gibbs, chair of the Advisory Committee to the Director of the Division of Fire Prevention and Control on Wildland Fire and Prescribed Fire Matters, presented legislative recommendations. This committee was created by executive order of the Governor. The advisory committee recommended that:

- public agencies be immune when insurance companies and their contractors conduct wildfire and hazard mitigation activities on private property. This recommendation resulted in Bill G;
- county governments be allowed to prohibit agricultural burning and the sale and use of fireworks during periods of high fire danger. These recommendations were incorporated into Bill C;
- the state provide accidental death and disability coverage for seasonal firefighters employed by local governments who are deployed by the state outside of their jurisdictions for wildfire response. Bill F, which requires the state to make a lump-sum payment to the survivors of a seasonal wildland firefighter employed by the state or a local government killed in the line of duty, resulted from this recommendation; and
- certain technical changes be made to state law enacted in 2013 that created a prescribed burning program. These changes were incorporated into Bill I.

Issues facing Colorado's fire service. Gary Briese, executive director of the Colorado State Fire Chiefs, provided to the committee an overview of Colorado's fire service. Mr. Briese discussed the scope of the state's fire service, its responsibilities, the resources available to the service for fire response, and challenges facing those tasked with fighting fires. During his presentation, Mr. Briese noted a rising incidence of several types of cancers among firefighters, and discussed potential sources for this elevation of cancer risk. Bill E creates the Local Firefighter Safety Fund for the purpose of providing grants to local governments to increase firefighter safety and address occupation-related diseases.

Access to wildfire-related information. Various witnesses and committee members expressed concern regarding a lack of communication between state agencies and the public about wildfire issues. In response to public testimony, Bill H creates the Wildfire Information and Resource Center as a resource for enhancing information access by homeowners, wildland fire professionals, the media, and educators.

Draft bills rejected by the committee. The commission rejected one bill drafted for its consideration concerning building codes in the wildland-urban interface. As Colorado is a "local option" state, there is no state law mandating the use of a building code that is specific to residential or commercial buildings constructed in the wildland-urban interface. Some Colorado counties have amended their building codes to include building requirements for commercial and residential buildings constructed in the wildland-urban interface. The committee discussed and heard from subject-matter experts on the issue at all five of its meetings. Draft Bill 1 would have required certain local governments to adopt and enforce the International Wildland-Urban Interface Code, or a comparable substitute code, that would apply to the construction of, or any renovations made to, commercial or residential buildings located within fire hazard areas of certain municipalities.

Committee Recommendations

As a result of the committee's deliberations, the committee recommends eight bills and two resolutions for consideration during the 2014 legislative session. The committee approved two of these bills, Bill A and Bill D, without prime sponsors. Legislative rules require these two bills to have prime sponsors in order to be approved by the Legislative Council. As a result, the committee recommends an additional bill, Bill I, conditional upon one of two bills, Bill A or Bill D, not having prime sponsorship by the time the Legislative Council acts on the measures.

Bill A — Removal of Trees by Local Governments to Reduce Fire Risk. Current law authorizes counties and municipal governments to compel the removal of weeds and brush from private property, and to recover the cost of removal through an assessment on the property owner. Bill A extends local government authority to abate nuisance vegetation to specifically include trees. Action by a local government to remove trees must include a finding that the trees to be removed are a fire hazard.

Bill B — Prohibit Agricultural Burning Fire Danger and Restrict Fireworks. Bill B allows county governments to prohibit or restrict the ability of agricultural producers to conduct burning on their properties during periods when red flag warnings or fire weather watches have been issued by the National Weather Service. The bill further strikes an existing provision in state law that limits the ability of county governments to prohibit or restrict the sale, use, and possession of fireworks between May 31 and July 5 of each year. This provision currently allows county governments to prohibit such activity during this period based only on an express finding of high fire danger.

Bill C — Allow CWRPDA Private Entity Forest Health Loans. Current law provides that the Colorado Water Resources and Power Development Authority (CWRPDA) may issue bonds with proceeds to be used for loans to governmental agencies for certain forest health projects. Bill C extends CWRPDA authority to allow forest health project loans to private entities.

Bill D — Change Wildfire Mitigation Tax Deduction to Credit. For each tax year until 2024, current law allows taxpayers who have undertaken wildfire mitigation measures on their property to deduct up to half the cost of these measures, not to exceed a total deduction of \$2,500, from their state taxable income. For tax years 2015 through 2024, Bill D repeals the current income tax deduction and provides an income tax credit of up to \$2,500 for half the cost of wildfire mitigation measures. The bill limits eligibility for the credit to taxpayers who own and perform mitigation work on property in the wildland-urban interface. The bill includes relevant definitions and provisions for the carryover of the credit for up to five years.

Bill E — Local Firefighter Safety Grant Program. Bill B creates the Local Firefighter Safety and Disease Prevention Fund for use in making need-based grants to local governing bodies for equipment and training designed to increase firefighter safety and prevent occupation-related diseases. The bill requires the director of the Division of Fire Prevention and Control to promulgate rules governing the award of such grants, including consideration of recommendations of the Fire Service Training, Certification, and Firefighter Safety Advisory Board and the recipient governing body's other fund-raising efforts. The bill transfers \$3.25 million annually for five fiscal years to the new fund from the Mineral Leasing Fund in lieu of transferring the moneys to the Wildfire Preparedness Fund.

Bill F — Wildland Firefighters Death Benefit Payments. Bill F directs the Division of Fire Prevention and Control within the Department of Public Safety to make a lump-sum payment of \$10,000 to the survivors of a seasonal wildland firefighter employed by the state or a local government who is killed in the line of duty. The bill authorizes the director of the division to adopt rules as necessary to administer and fund the death benefits.

Bill G — Immunity for Public Agencies from Insurance Wildfire Mitigation. Under current law, emergency responders, including governmental agencies involved in wildfire response, are generally immune from civil liability for emergency-related death or injuries. Bill G extends this immunity to protect governmental agencies against the acts of insurance companies and their contractors engaged in the protection of private property. The bill specifies that such insurance companies and their contractors are not eligible for governmental immunity or volunteer immunity under Colorado law. The bill also authorizes an insurer to provide services protecting the property of its policyholders in the course of an emergency.

Bill H — Wildfire Information and Resource Center. Bill H creates the Wildfire Information and Resource Center in the Department of Public Safety's Division of Fire Prevention and Control. The bill states that the center will improve protection of the public by enhancing access to information by homeowners, wildland fire professionals, the media, and educators. The center must maintain a website including information regarding current wildfires in Colorado, how to prevent and prepare for a wildfire, statewide fire danger and current burning restrictions, current prescribed burn activity in Colorado and contact information for the responsible agency, wildland and prescribed fire training, sources of funding for wildfire mitigation activities, and any other information that the division director deems pertinent, such as wildfire research.

Bill I — Corrections To Prescribed Burning Program Laws. Bill I makes technical changes to the prescribed burning program created under Senate Bill 13-083, including changing certain terminology and stipulating that, under prescribed burning standards promulgated by the director of the Division of Fire Prevention and Control, only a person qualified by National Wildfire Coordinating Group standards may satisfy requirements to have a qualified person present at a prescribed burn site. Current law allows individuals certified by the division to also satisfy on-site requirements.

Resolution A — Honor Granite Mountain Interagency Hotshots. Joint Resolution A honors the Granite Mountain Interagency Hotshot firefighting crew based in Prescott, Arizona, which lost 19 of its members while battling the Yarnell Hill Fire in Arizona in June 2013. The crew has a history of responding to wildfires in Colorado.

Resolution B — Honor Colorado National Guard. Resolution B honors the Colorado Army National Guard and Air National Guard for their wildfire response efforts.