

Wildfire Matters Review Committee

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Wildfire Matters Review Committee Report

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. In 2014, the General Assembly added a requirement that the committee consider the creation of a commission to assist the director of the Division of Fire Prevention and Control within the Department of Public Safety in performing his or her duties, and report any recommendations about such a commission to the agriculture committees of the Senate and House of Representatives.

Committee Activities

The committee met four times during August and September 2014. At all four 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 capabilities and aviation activities undertaken in 2014; forest health; homeowner's insurance in the wildland-urban interface; funding needs for various wildfire mitigation and response initiatives, including federal funding; the status of the timber industry; prescribed burning; wildfire behavior predictability; stakeholder legislative recommendations; communications during emergencies; and wildfire preparedness efforts undertaken by local governments. 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;
- Colorado State Fire Chiefs;
- the United States Forest Service;
- the Colorado State Forest Service;
- the Division of Insurance within the Department of Regulatory Agencies;
- the National Center for Atmospheric Research;
- the State Land Board;
- Colorado Counties, Inc.;
- the Colorado Municipal League;
- local governments;
- emergency first responders; and
- the Nature Conservancy.

The committee heard public testimony at all four of its meetings, and spent time during meetings undertaking organizational activities and considering draft legislation. Six bills and one joint resolution were drafted at the request of the committee, which ultimately approved five bills and the resolution. Topics covered and recommendations made by the committee are discussed below.

Fuel reduction in forested areas. The committee continued to focus on opportunities for decreasing the dangerous build-up of fuel in Colorado's forests, particularly in the wildland-urban interface, where a growing population lives alongside densely forested tracts of land that are often not mitigated for wildfire-risk purposes. Several witnesses stressed the importance of fuel load reduction to forest fire management, and Michael Lester, Colorado State Forester, provided an overview of the timber industry in the state. On several occasions, the committee returned to the theme of the timber industry as a partner in helping to reduce forest fuel loads. Representatives from Colorado Counties, Inc., and the Colorado Municipal League briefed the committee on efforts undertaken at the local government level to reduce forest fuels through such practices as slash pile burning, prescribed burning, thinning and chipping, and marketing forest products. These discussions, along with stakeholder recommendations, resulted in two bills. Bill A continues the Wildfire Risk Reduction Grant Program, which provides funding opportunities for projects implementing hazardous forest fuel reduction treatment. Bill B creates the Woody Biomass Grant Program, which promotes the use of woody biomass as a fuel source for public buildings.

Issues regarding prescribed burns. The committee received testimony from a panel on prescribed burn activities. The panel included Michael Lester, Paige Lewis, Forest Heath Program Director for The Nature Conservancy, and Paul Cooke, Director of the Division of Fire Prevention and Control (DFPC) within the Department of Public Safety. The panel members discussed the practice of prescribed burns as a tool for wildfire mitigation. The Nature Conservancy recommended that state employees who are officially certified to conduct prescribed burn activities and who are acting within the scope of their duties be immune from the liability under existing law. This recommendation was incorporated into Bill C.

Federal support for wildfire suppression. Various witnesses and committee members expressed concern regarding the federal government's role in wildfire suppression. The committee discussed the mitigation of federal land, aerial fleet support for wildfire suppression efforts, and federal funding for mitigation programs. In response to these concerns, Resolution A asks the federal government to create a separate fire suppression line item in the federal budget due to changes in funding and asks the federal government to purchase and deploy additional aerial equipment to be used for wildfire suppression.

Property tax relief. The committee received testimony from Esther van Mourik, Senior Staff Attorney with the Office of Legislative Legal Services (OLLS), concerning rule review of updated provisions in the Assessors' Reference Library Manuals produced by the Department of Local Affairs, Division of Property Taxation. Specifically, the OLLS found that the Property tax administrator does not have the authority to provide for continued agricultural classification of land after its productive capacity is destroyed in a natural disaster, such as a wildland fire. Bill E provides this authority.

Volunteer fire departments. A number of volunteer fire departments in Colorado operate without governmental organization and authority. Of the state's approximately 40 nonprofit volunteer fire departments, many rely on contracts or other funding from local governments. Because these volunteer fire departments are not recognized in statute as part of the state's fire service, they are often ineligible for grants, training, and other assistance. The

Governor's Wildland and Prescribed Fire Advisory Commission recommends the creation of a statutory framework that will enable nonprofit volunteer fire departments to receive grants and participate in other aspects of the fire service. Bill D creates a statutory framework consistent with this recommendation.

Recommendations to the House and Senate Agriculture Committees. To satisfy a statutory requirement that the committee consider the merits of creating a wildland and prescribed fire advisory commission to assist the director of the DFPC in performing his or her duties, at its September 10 meeting, the committee discussed the merits of creating such an advisory commission.¹ The committee also discussed the role of the current Governor's Wildland and Prescribed Fire Advisory Commission, which was created by executive order in 2013 to fulfill a similar advisory role to the director of the DFPC.² The committee elected not to recommend creating a statutory commission at this time, and recommended to the House and Senate Agriculture Committees that the director of the DFPC work with the Wildfire Matters Review Committee to address the following concerns with respect to the Governor's commission:

- representation from the Western Slope and/or San Luis Valley;
- a travel allowance or other compensation for members participating from remote parts of the state;
- representation on the advisory committee to include additional individuals with a science background;
- full voting representation for the State Forester; and
- representation by air quality regulators (e.g., the Colorado Department of Public Health and Environment).

Draft bills rejected by the committee. The committee rejected one bill drafted for its consideration concerning changing an existing tax deduction for landowners who perform wildfire mitigation measures into a tax credit. The bill would have allowed a landowner to claim a tax credit of 25 percent of costs incurred in performing these measures, not to exceed \$2,500. A similar bill was recommended by the committee in 2013, but the resulting legislation, House Bill 14-1009, was lost in the Senate.

Committee Recommendations

Bill A — Continue Funding Wildfire Risk Reduction Grants. In 2013, the General Assembly created the Wildfire Risk Reduction Grant Program to fund competitive grants for projects implementing hazardous forest fuel reduction treatments. The program, administered by the Department of Natural Resources, received an initial funding transfer of \$9.8 million from the General Fund. Bill A transfers an additional \$9.8 million in General Fund moneys to the program, effective July 1, 2015, and makes certain technical changes to the program.

Bill B — Public Building Woody Biomass Energy Grant Program. Bill B creates the Public Woody Biomass Energy Grant Program to be administered by the Department of Natural Resources, and transfers \$1 million annually to the program for five years beginning July 1, 2015. Under the program, the department awards grants to public entities to use woody biomass as a fuel source for biomass energy systems in public buildings when the grant allows

¹Section 2-3-1602 (1.5), C.R.S.

²Executive Order B 2013-001

the public building to be cost-effective in comparison to other fuels or the executive director of the department reasonably believes the grant will provide other substantial benefits specified in rules promulgated by the executive director. The bill outlines some of the rules to be promulgated, including the criteria to be considered in determining the special benefits that a particular grant may provide.

Bill C — Sovereign Immunity for State Employees in a Prescribed Fire. Bill C clarifies that state employees conducting a prescribed burn activity are covered under existing sovereign immunity laws. The bill states that an employee, who is officially certified to conduct prescribed burns and who is acting within the scope of his or her employment, is immune from liability for tort claims. The bill does not extend immunity to an employee whose actions or failures are willful or wanton.

Bill D — Volunteer Fire Department Organization. Bill D creates a framework for the organization of nonprofit, nongovernmental volunteer fire departments and provides for the participation of these departments in programs and grants administered by the Division of Fire Prevention and Control in the Department of Public Safety. To be recognized as a volunteer fire department under the bill, the department must be incorporated as a nonprofit corporation and enter into an agreement to provide firefighting and related services to local or state officials responsible for fire protection.

Bill E — Agricultural Land Destroyed by Natural Cause. Bill E specifies that if agricultural land is destroyed by a natural cause on or after January 1, 2012, the land will retain its agricultural classification for a rehabilitation period consisting of the year of destruction and the next four property tax years. During the rehabilitation period, the bill specifies that the owner must make progress toward restoring agricultural use or, in the case of forest land, must comply with an approved forest management plan.

Resolution A — Request Federal Wildland Fire Suppression Support. Resolution A requests action from the federal government concerning wildfire suppression and mitigation. The request asks the federal government to create a separate fire suppression line item in the federal budget due to changes in federal funding for fire mitigation. Additionally, the resolution asks the federal government to purchase additional aerial firefighting equipment to be used for wildfire suppression in Colorado and other states.