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LOWER NORTH FORK WILDFIRE COMMISSION

by Raegan Robb

On March 22, 2012, state officials coordinated a prescribed burn on publicly owned land in rural Jefferson County. Based on a report issued by the U.S. Forest Service, embers from that prescribed burn are believed to have ignited the Lower North Fork Wildfire in the same area on March 26, 2012. The wildfire burned approximately 1,400 acres and resulted in 3 fatalities, 27 residences destroyed or substantially damaged, and \$11.3 million in private property damages. The state expended \$6.6 million to extinguish the wildfire. This *issue brief* summarizes legislative actions taken by the Colorado General Assembly in response to the Lower North Fork Wildfire.

2012 Legislation

House Bill 12-1361. This bill amended the Colorado Governmental Immunity Act (CGIA) to waive the state's sovereign immunity for any prescribed fire started or maintained by a state entity on or after January 1, 2012. The CGIA caps damage recoveries at \$150,000 for individual claims and \$600,000 for a single occurrence injuring two or more individuals. However, the bill provided for recovery amounts above the statutory limits when the State Claims Board recommends that the General Assembly adopt legislation authorizing payments above the limits to be paid from the General Fund.

House Bill 12-1352. This bill created the Lower North Fork Wildfire Commission, which was charged with investigating the causes of the Lower North Fork Wildfire and recommending legislative or other action that would prevent a similar tragedy. The commission

is comprised of five members, including the executive director of the Colorado Department of Public Safety (CDPS); two Senators, one appointed by the President of the Senate and one appointed by the minority leader; and two Representatives, one appointed by the Speaker of the House and one appointed by the minority leader. The commission was charged to investigate the following specific issues:

- causes of the wildfire;
- the impact of the wildfire on the affected community;
- the loss of life and financial devastation incurred by the community;
- the loss of confidence by the community in the response to the emergency by governmental entities at all levels; and
- measures to prevent the occurrence of a similar tragedy.

The commission was also required to hold at least one public meeting to collect information and deliberate on findings, policy recommendations, and compensatory recommendations. Lastly, the bill requires the commission to submit a final report, including any recommendations, to certain legislative committees of reference by December 31, 2012.

Commission activities. The commission met five times between June and September 2012, and may meet a sixth time prior to issuing its final report. At three of the meetings, the commission heard presentations from representatives of various entities involved in emergency response, wildfire issues, and forest health as well as representatives with specific knowledge about the Lower North Fork Wildfire.

On August 13, 2012, the commission toured the property owned by Denver Water where the prescribed burn that caused the wildfire was conducted for watershed protection. The commission also toured residential properties that were destroyed by the wildfire. After the tour, the commission held a public hearing at Conifer High School and heard testimony regarding the emotional and financial impact of the fire on the community.

2013 Proposed Legislation

The commission has recommended four bills for consideration in the 2013 legislative session. A summary of each follows.

Legislation concerning a state prescribed burn program. Bill A creates the Colorado Prescribed Burning Act, requiring the Division of Fire Prevention and Control, within CDPS, to conduct rulemaking and adopt standards for prescribed burning in the state. The bill directs the division to establish standards for the training and certification of prescribed burn managers, consider alternative fuel reduction strategies, and requires qualified state officials to supervise any controlled burn. The bill further defines the role of the division to include the coordination of multi-agency initiatives to reduce wildfire fuel loads and responsibility for conducting a formal review following any prescribed fire that escapes.

Legislation concerning an interim Wildfire Matters Review Committee. Bill B creates a standing interim committee to review state policies addressing wildfire prevention and mitigation, forest health, emergency management, and other issues relating to wildfire. Under the bill, ten members of the General Assembly, five members from the House of Representatives and five members from the Senate, must meet at least once in each legislative interim. The bill contains a five-year sunset provision.

Legislation concerning an extension of financial incentives for wildfire mitigation. Bill C extends the sunset date of two state statutes that provide financial assistance for wildfire mitigation activities. First, the bill extends the deduction from taxable income of

one-half the actual costs of certain wildfire mitigation measures performed on the property of the taxpayer, up to \$2,500 per year for tax years 2014 through 2024. Eligible wildfire mitigation measures include the creation of a defensible space around structures and fuel reduction. The bill does not require eligible mitigation measures to be preapproved by a community wildfire protection plan, as required under current statute for tax years 2009 through 2013. The bill also extends the authorization of the Colorado Water Resources and Power Development Authority to issue up to \$50 million in bonds for the watershed protection and forest health projects of government agencies through July 1, 2023.

Legislation concerning a statewide all-hazards resource mobilization plan. Bill D clarifies the duties of the Division of Homeland Security and Emergency Management in CDPS for developing a statewide resource mobilization plan, which provides for distribution of funding and allocation of other assets in the event of disasters and other large-scale emergencies and incidents. Under the resource mobilization plan, standard procedures will be established for resource mobilization, allocation, deployment, tracking, accounting, demobilization, and integration with the state emergency operations plan. The bill provides that the Governor or a local emergency manager may request the mobilization of state resources, and that the state will provide personnel for a unified command in such incidents.

Draft bills rejected by the commission. The commission rejected three measures drafted for its consideration. One draft bill would have required counties to adopt land development regulations that address certain wildfire mitigation issues within wildland-urban interface areas. A second draft bill would have increased the amount that may be recovered under the CGIA from \$600,000 to \$1.2 million for injuries caused by a public entity to two or more individuals in any single event. The bill would have applied to injuries sustained in the Lower North Fork Wildfire. Another bill would have included additional minimum standards for prescribed burns.