

Lower North Fork Wildfire Commission

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Representative Cheri Gerou
Senator Jeanne Nicholson

Representative Claire Levy
James Davis, Executive Director,
Department of Public Safety

Legislative Council Staff

Bo Pogue, Research Associate
Julia Jackson, Senior Researcher
Raegan Robb, Senior Researcher
Alex Schatz, Fiscal Analyst

Office of Legislative Legal Services

Bob Lackner, Senior Attorney
Kate Meyer, Staff Attorney II
Esther van Mourik, Senior Staff Attorney

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Lower North Fork Wildfire Commission Report to Legislative Council

Commission Charge

Pursuant to House Bill 12-1352, the Lower North Fork Wildfire Commission is charged with investigating, reporting findings, and making recommendations for legislative or other action on matters related to the Lower North Fork Wildfire, which resulted from a prescribed burn in March 2012, near Conifer in Jefferson County. The commission is to investigate the following specific matters identified by the bill:

- 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 bodies at all levels; and
- measures to prevent the occurrence of a similar tragedy.

The bill requires the commission to submit a report to certain legislative committees of reference by December 31, 2012, containing findings and recommendations for legislative or other action. The bill allows dissenting opinions to be appended to the report.

Commission Activities

The commission met five times from June to September 2012, and may meet a sixth time prior to issuing its report. At three of the meetings, the commission heard presentations from, and engaged in discussion with, representatives of various entities involved in emergency response, wildfire issues, and forest health, as well as representatives knowledgeable on issues associated with the Lower North Fork wildfire. These entities included:

- the Nature Conservancy;
- the Office of Emergency Management and the Division of Fire Prevention and Control within the Colorado Department of Public Safety;
- the Colorado Department of Law;
- the Colorado Department of Local Affairs;
- the Governor's Office of State Planning and Budgeting;
- the Air Pollution Control Division within the Colorado Department of Public Health and Environment;
- Colorado State University's Warner College of Natural Resources and Colorado Forest Restoration Institute;
- the Colorado 9-1-1 Resource Center;
- municipal utilities; and
- local emergency responders.

During one meeting, the commission toured the property on which the prescribed burn that resulted in the wildfire was conducted, and also toured residential properties that were destroyed by the wildfire. After the tour, the commission held a public hearing at Conifer High School concerning the wildfire and its impacts. The remaining two meetings were spent on organizational



activities, considering draft legislation, and discussing the commission's reporting requirement. Seven bills were drafted at the request of the commission, including one that was drafted as an amendment to another draft bill, and four bills were ultimately approved. Topics discussed during commission meetings and recommendations made by the commission are discussed below.

Emergency notification. Interoperable communications are a priority in emergency situations like wildfires. In Colorado, first responders use a variety of communication systems. Further, 9-1-1 and emergency notification systems are administered and delivered locally. Emergency notification systems are purchased by local authorities, and therefore a variety of different vendors are used in the state, each with different features and limitations. The commission heard testimony from state and local officials on these and other emergency notification issues.

Emergency response. The commission and representatives from the Department of Public Safety discussed financial constraints and operational concerns that result from the current emergency resource mobilization structure in Colorado. Under current law, the Governor's declaration of a disaster is required before certain state and federal resources are available for wildfire response. The commission heard testimony about Washington state's model, where an administrative mechanism is provided for early mobilization of emergency resources. Currently, Colorado's Office of Emergency Management within the Department of Public Safety is charged with developing a statewide all-hazards resource mobilization plan to facilitate communication and provide resources across jurisdictions. Bill D clarifies the office's duties with respect to this plan and establishes a method for governmental entities to seek reimbursement for providing disaster assistance across jurisdictions.

Field trip. On August 13, 2012, the commission held a morning session where it heard presentations on forest health and the use of prescribed burns in the wildland-urban interface, emergency management and communication, and the specific conditions that led to the Lower North Fork wildfire. The commission recessed and reassembled in Conifer, where it received a briefing concerning the specifics of the wildfire from personnel of the Elk Creek Fire Protection District, which provided first response services on the day of the wildfire. The commission then visited the property owned by Denver Water where the prescribed burn that resulted in the wildfire was conducted, and residential properties across the valley that were consumed by the wildfire. These visits provided the commission an on-the-ground perspective on the details of the wildfire.

After the site visits, the commission proceeded to Conifer High School for a public hearing. A representative from the Colorado Department of Law briefed the audience on ongoing litigation between the state of Colorado and claimants who incurred property losses as a result of the Lower North Fork wildfire. The commission then heard testimony from individuals affected by the fire and other area residents. The testimony provided the commission further perspective on the details of the wildfire, the impact of the wildfire on the community, and the losses incurred as a result of the wildfire.

Forest health. The front range includes a variety of forested communities, including the ponderosa and lodgepole pine forests that dominate the area of the Lower North Fork wildfire. The commission heard testimony regarding the importance of regular disturbance to the health of these forests. Historically, repeated fires have been a source of disturbance, but the use of fire suppression has resulted in more trees and more needles and wood materials on the ground. Disease and insects, such as the mountain pine beetle, are other sources of disturbance. Bill B creates the Wildfire Matters Review Committee which, if approved, will meet annually as an interim committee to address forest health issues in the context of wildfires and wildfire mitigation.

Prescribed burns. The commission heard testimony about the importance of prescribed burns as a wildfire mitigation tool. The state's duties concerning prescribed burns and other wildfire resources were consolidated under the Department of Public Safety by House Bill 12-1283. Prescribed burns are further regulated under the state's Smoke Management Program to address public health concerns associated with air quality, although these regulations do not directly address fire safety or forest health. The commission heard testimony that additional legislation to implement programs in the Division of Fire Prevention and Control may be appropriate, as House Bill 12-1283 provided limited instruction and modification of existing statutes related to wildfire activities. Bill A requires the Division of Fire Prevention and Control to implement a prescribed burning program, including minimum standards for conducting prescribed burns, processes for certifying prescribed burn managers, and policies related to wildfires resulting from the escape of prescribed burns.

Wildfire mitigation in the wildland-urban interface. Areas where homes and forest meet are called the wildland-urban interface (WUI). In addition to threatening homes and lives in these areas, wildfires can damage infrastructure and water resources. The commission heard about the need for mitigation efforts by landowners in the WUI to help protect their property when wildfires occur. The current state income tax incentive for wildfire mitigation activities will expire after tax year 2013. The current tax incentive is a deduction from taxable income of up to \$2,500 per year, which provides a maximum reduced tax burden of \$107.50 per taxpayer, per year based on Colorado's 4.3 percent flat tax rate. Approximately 500 people per year have claimed the deduction since 2009. The commission also noted that the bonding authority of the Colorado Water Resources and Power Development Authority for forest health projects has not been specifically used since being enacted by Senate Bill 08-221, but several governmental agencies have recently expressed interest in bonds for forest health projects. Under current law, this bonding authority is repealed as of July 1, 2013. Bill C extends both the tax incentive and the bonding authority.

Draft bills rejected by the commission. The commission rejected three measures drafted for its consideration. One measure, drafted as an amendment to Draft Bill 2, would have included additional minimum standards for prescribed burning, including establishing additional requirements for written burn plans, requiring review of burn plans by third-party reviewers, requiring advance notification for area residents about scheduled burns, and addressing the circumstances under which a prescribed burn is permissible when masticated fuels are present. Draft Bill 5 would have required counties along the WUI to adopt land development regulations that address certain wildfire mitigation issues. Draft Bill 8 would have increased the amount that may be recovered in tort from a public entity for injury to two or more persons in any single event from \$600,000 to \$1.2 million. The bill would have been applicable to injuries sustained on or after January 1, 2012, including those sustained in the Lower North Fork wildfire.

Commission Recommendations

As a result of the commission's discussion and deliberation, the commission recommends four bills for consideration in the 2013 legislative session.

Bill A — Prescribed Burn Program in the Division of Fire Prevention and Control. Bill A creates the Colorado Prescribed Burning Act, requiring the Division of Fire Prevention and Control to conduct rulemaking and adopt standards for prescribed burning in the state, including the consideration of alternative fuel reduction strategies and the presence of qualified state officials to supervise, and to establish standards for the training and certification of prescribed burn managers. The bill further defines the role of the Division of Fire Prevention and Control in the



Department of Public Safety, as created by House Bill 12-1283, including coordination of multiagency initiatives to reduce fuel loads and conduct a formal review following the escape of a prescribed fire.

Bill B — Wildfire Matters Review Committee. Bill B creates an interim committee to review state policies addressing wildfire prevention and mitigation, with sufficient scope to examine forest health, emergency management, and other issues relating to wildfires. Under the bill, ten members of the General Assembly, five members from the House of Representatives and five members from the Senate, must meet as the Wildfire Matters Review Committee at least once in each legislative interim. By July 1, 2013, three majority party members and two minority party members are to be appointed from each chamber to serve two-year terms. Existing legislative agency staff must provide assistance to the committee, with cooperation from the Department of Public Safety, the Colorado State Forest Service, and other state and local agencies. The bill contains a five-year sunset provision.

Bill C — Extend Wildfire Mitigation Financial Incentives. Bill C extends the sunset date of two current state statutes that provide financial assistance for wildfire mitigation activities. For tax years 2014 through 2024, Section 1 of the bill provides a deduction from taxable income of one-half the actual costs of certain wildfire mitigation measures performed on the property of the taxpayer, up to a \$2,500 deduction per year. 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. Section 2 of the bill extends from July 1, 2013, to July 1, 2023, 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.

Bill D — All-hazards Resource Mobilization and Reimbursement. Bill D requires that the director of the Division of Homeland Security and Emergency Management in the Department of Public Safety develop a statewide resource mobilization plan, providing 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 Colorado 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.