

NATURAL RESOURCES

Parks and Wildlife

SB 13-175 (*Enacted*)

Wildlife Habitat Stamp Programs Continuation

HB 13-1283 (*Enacted*)

Species Conservation Trust Fund

SB 13-169 (*Enacted*)

Reintroduce Black-Footed Ferret
Landowner Consent

SB 13-188 (*Enacted*)

Landowner Preference Wildlife Hunting
License

Oil, Gas, and Minerals

HB 13-1268 (*Postponed Indefinitely*)

Mineral Estate Disclosure Real Property Sale

SB 13-202 (*Enacted*)

Additional Inspections at Oil
& Gas Facilities

SB 13-284 (*Postponed Indefinitely*)

Streamline Oil Gas Enhanced
Environmental Permits

HB 13-1278 (*Enacted*)

Oil Spills Gas Releases Reporting

HB 13-1267 (*Deemed Lost*)

Increase Maximum Penalty Oil Gas
Violations

HB 13-1269 (*Deemed Lost*)

Reduce Conflict of Interest Oil
and Gas Commission

HB 13-1273 (*Postponed Indefinitely*)

New Funding Local Governments Oil Gas
Development Impacts

HB 13-1316 (*Deemed Lost*)

Oil Gas Commission Uniform
Groundwater Sample Rule

HB 13-1275 (*Postponed
Indefinitely*)

Front Range Oil & Gas Human
Health Study

Forest Health

SB 13-083 (*Enacted*)

Prescribed Burn Program Division Fire
Prevention & Control

SB 13-245 (*Enacted*)

Create the Colorado Firefighting
Air Corps

SB 13-269 (*Enacted*)

Wildfire Risk Reduction
Grant Program

SB 13-270 (*Enacted*)

Wildfire Preparedness & Emergency
Response Funds

SB 13-082 (*Enacted*)

Wildfire Matters Review Committee

The General Assembly considered a variety of natural resources-related legislation during the 2013 session. Major topics addressed include parks and wildlife, forest health, and oil, gas, and minerals.

Parks and Wildlife

In 2013, the General Assembly passed four bills related to parks and wildlife.

Senate Bill 13-175 continues the Habitat Stamp Program and the Wildlife Habitat Stamp Committee until a sunset review on July 1, 2027, and repeals the Colorado Wildlife Passport and its cash fund. In consultation with the committee, the Parks and Wildlife Commission is directed to give sufficient priority to:

- conserve and protect winter range and vital habitats, including migration corridors, for deer, elk, and other big game wildlife species;
- improve access for hunting, fishing and other wildlife-related recreation;
- protect habitat for species of concern; and
- preserve the diversity of wildlife.

Senate Bill 13-188 replaces the current landowner preference programs for allocating hunting licenses with a program that:

- establishes requirements for the land, including minimum size and wildlife carrying capacity;
- allocates the number of licenses based on the size of the land, from 1 license for the first 160 acres to a maximum of 19 licenses for 11,440 acres;
- limits the percentage of hunting licenses in a restricted game management unit (a geographical area identified by DNR) that is allocated to the program to between 10 and 25 percent;
- makes unused licenses available to landowners prior to the general public;
- authorizes an owner to transfer vouchers for the licenses to hunters, but prohibits brokering and restrictions on the vouchers; and
- authorizes Parks and Wildlife to disqualify a landowner or hunter from the program for up to five years if he or she does not comply with the provisions of the program.

Land in the existing programs remains eligible until July 1, 2016. The Parks and Wildlife Commission will promulgate rules implementing the new program by July 1, 2014.

House Bill 13-1283 reduces from \$6.6 million to \$4.0 million the FY 2013-14 transfer of money from the Operational Account of the Severance Tax Trust Fund to the Capital Account of the Species Conservation Trust Fund (SCTF) to fund programs submitted by the executive director of the Department of Natural Resources. These programs are intended to conserve native species that are listed as threatened or endangered under state or federal law, are candidate species, or are likely to become candidate species as determined by the U.S. Fish and Wildlife Service.

Senate Bill 13-169 allows for the reintroduction of black-footed ferrets in Colorado without legislative approval if the reintroduction occurs on private land with landowner consent and is pursuant to a federal programmatic safe harbor agreement and enhancement-of-survival permit. The permit provides immunity to landowners in cases of an "incidental take" (unintentional injury or death) that may result from implementation of conservation actions, specific land uses, and the return of the land to baseline conditions. The permit also limits the federal government's imposition of land, water, or resource-use restrictions or additional commitments of land, water, or finances to those contained in the original enhancement-of-survival permit.

Oil, Gas, and Minerals

Two bills were passed concerning oil, gas, and minerals during the 2013 legislative session, and seven bills failed to pass. Major topics that were debated include inspections of oil and gas locations, mandated reporting for waste spills, mineral rights property disclosures, groundwater sampling rules, and penalties for violations of the Oil and Gas Conservation Act.

Senate Bill 13-202 requires the Colorado Oil and Gas Conservation Commission (COGCC) in the Department of Natural Resources (DNR) to use a risk-based strategy for inspecting oil and gas locations that targets the operational phases that are most likely to experience spills, excess emissions, and other types of violations and that prioritizes more in-depth inspections. The bill also requires the COGCC to submit a report to the Joint Budget Committee and House and Senate committees of reference with jurisdiction over energy by February 1, 2014, on utilizing the risk-based strategy that is to include findings, recommendations, and a plan, including staffing and equipment needs for implementing the strategy. The bill requires implementation of a strategy by July 1, 2014, which may include a pilot project to test the strategy.

House Bill 13-1278 requires that spills of oil or exploration and production waste of one barrel (42 U.S. gallons) or more that is spilled outside of berms or other secondary containment mechanisms be reported within 24 hours of discovery to both the COGCC and the local jurisdiction responsible for emergency response. The spill report must include any available information concerning the type of waste involved in the spill, and the bill specifies that the COGCC may promulgate rules to implement these requirements.

House Bill 13-1268, which was postponed indefinitely, would have required real estate listing contracts, contracts of sale, and sellers' property disclosures for residential properties to disclose information regarding ownership of mineral rights and mineral estates, surface use agreements, and the potential for oil and gas activity to occur on or near the property. The Real Estate Commission, in the Department of Regulatory Agencies (DORA), would have been required to promulgate a rule setting forth the form and content of the disclosure. Listing contracts, contracts for sale, and seller's property disclosures for residential property prepared by persons who are not subject to the commission's jurisdiction would have been required to contain a disclosure statement in substantially the same form as that specified by the commission. If the seller complied with these requirements, the purchaser would have had no claim for relief against the seller or real estate professional for any property damage resulting from oil, gas, or mineral extraction.

As introduced, **House Bill 13-1267** would have increased the penalties for violations of the Oil and Gas Conservation Act. The maximum daily fine would have increased from \$1,000 to \$15,000 for each act of violation per day that the violation continued. The minimum penalty for a violation that resulted in a significant adverse impact on public health, safety, or welfare, including the environment and wildlife resources, would have been \$5,000 for each act of violation per day. In addition, the \$10,000 maximum cap on violations that did not result in a significant adverse impact would have been repealed. The bill was deemed lost.

Senate Bill 13-284 would have established an expedited air quality permit review process for certain oil and gas operators subject to regulation by the Colorado Department of Public Health and Environment (CDPHE) that certify that they will use pollution control technology that meets enhanced environmental and human health protection standards. The CDPHE would have also been authorized to establish an expedited review process for water quality permitting. The bill was postponed indefinitely.

Under current law, the COGCC has mandates to reduce waste and to foster the development of oil and gas resources in a manner consistent with the protection of public health, the environment, and wildlife resources. Additionally, the commission may include at least three commissioners who are employed by the industry. As introduced, **House Bill 13-1269** would have changed the COGCC's mandate to "ensure that the responsible, balanced development, production, and utilization of the natural resources of oil and gas in Colorado protects public health, safety, and welfare, including protection of the environment and wildlife resources." The bill also would have prohibited a newly appointed commissioner from being an employee, officer, or director of an oil and gas operator or service company while serving on the COGCC. Finally, it would have redefined the term "waste" to exclude reduced production in the amount of oil or gas due to compliance with government regulation. The bill was deemed lost.

As introduced, **House Bill 13-1273**, which was postponed indefinitely, would have required oil and gas operators to pay a local government designee fee to the COGCC when applying for a permit to drill. Each quarter, the COGCC would have distributed these revenues equally to each local government with a registered local government designee within the boundaries of a facility authorized by the permit. Finally, the bill would have repealed the prohibition on local governments charging a tax or fee for conducting inspections or monitoring oil and gas operations with regard to matters subject to COGCC rules, order, or permit condition.

As introduced, **House Bill 13-1316**, which was postponed indefinitely, would have required the COGCC to adopt uniform groundwater sampling rules, applicable to any new oil and gas production well or any injection well subject to COGCC regulation in the state. Under the bill, COGCC rules would have required operators to sample, before drilling, up to four groundwater sources within one-half mile of the new well. Operators would have also been required to re-sample each of these sources within 12 months after the well had been completed, and to again re-sample each groundwater source between five and six years after the well had been completed.

Finally, **House Bill 13-1275**, which was postponed indefinitely, would have required the State Board of Health to conduct a review of existing epidemiological data to determine whether oil and gas operations can have an adverse effect on human health. The review would have been based on data collected in or near Arapahoe, Boulder, Larimer, and Weld Counties and would have included at least one control area. The contractor would have been required to design the review with input from medical researchers, statisticians, and environmentalists to provide scientifically-based information. The bill would have created an oversight committee comprised of 11 members with specific backgrounds.

Forest Health

The management of wildfires was the predominant issue considered regarding forest health during the 2013 legislative session; five bills were passed relating to wildfire matters.

Senate Bill 13-083, recommended by the 2012 Lower North Fork Wildfire Commission, defines the role of the Division of Fire Prevention and Control (DFPC) in the Department of Public Safety (DPS), and specific duties related to the DFPC. The DFPC is charged with implementing a prescribed burning program, including setting fees; developing appropriate rules and standards; and enforcing and directing government efforts to address catastrophic and escaped fire. The bill also reassigns to the director of the DFPC certain permitting and planning activities related to prescribed fires that were previously the responsibility of the state forester.

Minimum prescribed burning standards adopted by rule must include a requirement that a state certified prescribed burn manager or a nationally qualified burn boss be present on site for the duration of any prescribed burn. Attendance of certain prescribed burns by a certified prescribed burn manager is required by December 1, 2013.

The prescribed burning program creates specific duties for the division, including:

- training, testing, and certifying prescribed burn managers;
- conducting rulemaking in consultation with affected agencies;
- conducting prescribed burning in wildland areas;
- constructing fire breaks and taking similar actions to prevent catastrophic wildfire;
- providing advisory services;
- instituting a public information campaign (subject to available funding); and
- investigating escaped prescribed fires.

Prescribed burning regulated by the bill does not include controlled agricultural or ditch burns or open burning conducted pursuant to a county permit system. Additionally, prescribed burning minimum standards do not apply to operations of federal agencies and other organizations that have adopted standards consistent with those required by the bill. Private landowners are not required to be certified to conduct prescribed burning on their own property, but such landowners or their designees that are certified prescribed burn managers and conduct burns in accordance with applicable law are not liable for damages except in cases of gross negligence or willful and wanton neglect.

Senate Bill 13-270 reorganizes and modifies statutes that created the Wildfire Emergency Response Fund (WERF) and the Wildfire Preparedness Fund (WPF). The bill authorizes the Governor to order the transfer of funds from the Disaster Emergency Fund into the WERF if he or she determines an emergency is imminent. It also allows the Governor and Division of Fire Prevention and Control (DFPC) in the Department of Public Safety to increase expenditures from the WERF in the annual Wildfire Preparedness Plan. The bill further clarifies that the Governor may increase or decrease expenditures from the WERF if a wildfire situation is more or less severe than anticipated in the Wildfire Preparedness Plan. It also authorizes the DFPC to enter into agreements with other governmental agencies for the use of state firefighting resources.

Senate Bill 13-269 creates the Wildfire Risk Reduction Grant Program (WRRGP), including the Wildfire Risk Reduction Fund (WRRF), which is a new cash fund established to provide funding for grants. The bill authorizes the DNR to administer the WRRGP with a focus on providing grants for projects that implement hazardous forest fuel reduction treatments to reduce the risks associated with wildfires in the wildland-urban interface. The DNR's duties include establishing application requirements, making periodic reports, and monitoring projects funded by WRRGP grants. Eligible grant applicants must demonstrate an ability to provide matching funds for proposed projects and must also include a plan for utilizing any woody material generated by the project. Up to 25 percent of the WRRGP funds will be dedicated to funding capacity-building efforts to provide local governments, community groups, and forestry groups with the resources necessary to implement site-based hazardous forest fuel reduction treatments. The bill requires the Colorado State Forest Service to collaborate with the DNR and provide technical assistance to grant applicants.

In establishing and administering the program, the department will work with the newly created Wildfire Risk Reduction Grant Program Advisory Committee, consisting of eight members appointed by the executive director of the DNR to represent various interests involved in, or concerned with, the mitigation of catastrophic wildfires, such as federal land management, local government, and the forest products industry. The advisory committee prepares a request for grant proposals, reviews applications, and awards grants. In addition, the advisory committee must prioritize grant applications with a project in high-risk wildland-urban interface areas.

The bill directs the state treasurer to transfer \$9,800,000 from the General Fund to the Wildfire Risk Reduction Fund on July 1, 2013. Moneys in the fund are continuously appropriated for the purposes of the WRRGP, and up to 5 percent of moneys available in the WRRF may be used for monitoring and measurement of effectiveness of grants. Lastly, the bill requires the DNR to make annual reports to the General Assembly while the bill is in effect. The WRRGP will be repealed on July 1, 2018.

Senate Bill 13-245 establishes the Colorado Firefighting Air Corps (CFAC) within the Department of Public Safety, DFPC. The CFAC is comprised of aircraft, personnel, facilities, and equipment necessary to conduct aerial firefighting. The bill authorizes the DFPC to purchase and retrofit firefighting aircraft or to contract for such aircraft and supporting services. If the CFAC acquires aircraft, the director of DFPC must establish reimbursement rates for CFAC assets made available to assist the aerial firefighting efforts of other jurisdictions.

The bill also creates the Colorado Firefighting Air Corps Fund to receive grants, reimbursements, and funding from other sources, as well as state appropriations. The fund is continuously appropriated and may be used for CFAC operational expenditures.

By April 1, 2014, the DFPC must submit to the Joint Budget Committee and to the General Assembly a report concerning the feasibility of CFAC and strategies to address state firefighting activities. This report will include budget requests for CFAC and aerial firefighting if recommended by the DFPC.

Senate Bill 13-082, recommended by the Lower North Fork Wildfire Commission, creates the Wildfire Matters Review Committee to review and propose legislation related to wildfire prevention and mitigation in the state. Comprised of ten members of the General Assembly, the committee must meet at least once per year during the interim and is transferred any remaining powers, duties, and responsibilities of the Lower North Fork Wildfire Commission. The committee has a repeal date of July 1, 2018.