



**Montana Legislative Services Division**  
**Office of Research and Policy Analysis**

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TO: Select Committee on Efficiency in Government  
FROM: Leanne Kurtz  
DATE: March 8, 2012  
RE: County fire chief designation

According to your staff, a statement was made at your Bozeman meeting that statutes prohibit a county from establishing the position of county fire chief. This is incorrect. Section 7-33-2202(3), MCA, requires that the county governing body appoint a county rural fire chief and as many district rural fire chiefs as it considers necessary. While a county must appoint a fire chief, under 7-33-2203, the county is prohibited from compensating that officer for those duties. Powers and duties of chiefs of local governmental fire agencies (counties, fire districts, fire service areas) are listed in 7-33-2001.

Counties are not authorized to designate firewardens. As provided in 76-13-104(7), these officials are appointed by the Department of Natural Resources and Conservation with the concurrence of the counties. Firewarden duties are provided in 76-13-116 and in rules adopted by DNRC.

The statutes cited above are included for your reference.

**7-33-2202. Functions of county governing body.** (1) The county governing body, with respect to rural fire control, shall carry out the specific authorities and duties imposed in this section.

(2) The governing body shall:

- (a) provide for the organization of volunteer rural fire control crews; and
- (b) provide for the formation of county volunteer fire companies.

(3) The governing body shall appoint a county rural fire chief and as many district rural fire chiefs, subject to the direction and supervision of the county rural fire chief, that it considers necessary.

(4) Pursuant to 76-13-105(3), the county governing body shall, within the limitations of 7-33-2205, 7-33-2206, 7-33-2208, and 7-33-2209, either:

(a) directly protect from fire land in the county that is not in a wildland fire protection district, as provided in 76-13-204, or under the protection of a municipality, state agency, or federal agency; or

(b) enter into an agreement for wildland fire protection with a recognized agency, as that term is defined in 76-13-102.

(5) The county governing body may enter into mutual aid agreements for itself and for county volunteer fire companies with:

- (a) other fire districts;
- (b) unincorporated municipalities;
- (c) incorporated municipalities;
- (d) state agencies;
- (e) private fire prevention agencies;
- (f) federal agencies;
- (g) fire service areas;
- (h) governing bodies of other political subdivisions in Montana; or

(i) governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to Title 10, chapter 3, part 11.

(6) If the county governing body has not concluded a mutual aid agreement, the county governing body, a representative of the county governing body, or an incident commander may request assistance pursuant to 10-3-209.

**7-33-2203. County rural fire chief.** The county rural fire chief may be a regular county officer or other person who in the opinion of the board is the best qualified to perform the duties of this office and who is not entitled to additional compensation for the duties hereby imposed.

**7-33-2001. Fire chief -- powers and duties.** (1) A fire chief of a governmental fire agency organized under this chapter must be considered the highest ranking officer in the agency and is responsible for the operation of the agency, including but not limited to:

- (a) development and implementation of agency programs and procedures;
- (b) performance of agency personnel;
- (c) preventing outbreak of fires;
- (d) minimizing danger to persons and damage to property caused by fires; and
- (e) providing and managing emergency services that are established by the agency and that are consistent with national standards. These services may include but are not limited to:

(1) A fire chief of a governmental fire agency organized under this chapter must be considered the highest ranking officer in the agency and is responsible for the operation of the agency, including but not limited to:

- (i) fire suppression;
- (ii) medical aid;
- (iii) hazardous materials response;
- (iv) ambulance service; and
- (v) extrication from vehicles.

(2) In development of agency regulations, programs, and procedures, the fire chief is subject to applicable laws and ordinances.

(3) The fire chief serves under the direction of the trustees, if trustees have been designated to manage the fire agency under the provisions of this chapter. If the governing body retains management, then the fire chief serves under the direction of the governing body.

(4) The fire chief shall develop organizational and operational procedures and shall implement those procedures by issuing written administrative regulations and operational guidelines.

(5) In the event of a fire or other emergency involving the protection of life or property, the fire chief has the authority to direct any operation necessary to extinguish or control the fire or perform a rescue in coordination with other authorities having jurisdiction.

(6) The fire chief may investigate suspected or reported fires, gas leaks, or other hazardous conditions and may take any action necessary to protect public health and safety and protect property or mitigate damage to property in the exercise of the chief's duties.

(7) In the exercise of the authority provided in subsections (5) and (6), the fire chief may:

- (a) enter any property;
- (b) prohibit any person, vehicle, or thing from approaching the scene;
- (c) remove or cause to be removed from the scene of the fire or other emergency

any person, vehicle, or thing that the chief determines may interfere with the operations of the agency.

(8) (a) Subject to 50-3-102(1)(c), the fire chief may investigate the cause, origin, and circumstances of every fire that occurs in the chief's jurisdiction that involves the loss of life, injury to a person, destruction of property, or damage to property.

(b) Subject to 50-3-102(1)(c), as part of the investigation, the fire chief may take immediate charge of all physical evidence relating to the cause of the fire and may pursue the investigation to its conclusion.

(c) The fire chief may investigate the cause, origin, and circumstances of unauthorized releases of hazardous materials.

(9) (a) The fire chief may establish and maintain a program applicable to every community in the chief's jurisdiction that provides for:

(i) regular examination of fire hazards; and

(ii) regular inspection of commercial property, after the property has been approved for occupancy by a certified city, county, or town building code jurisdiction or the department of labor and industry's bureau of building and measurement standards, with particular emphasis on occupancies identified as high risk to life and property.

(b) The fire chief may establish a formal fire inspection program as authorized by the department of justice under 50-61-102.

(10) The fire chief shall report all fires to the department of justice and shall use the national fire incident reporting system or other reporting method approved by the department of justice's fire prevention and investigation section.

(11) The fire chief is responsible for establishing and maintaining a training program for the agency and may use existing federal, regional, state, and local training resources. The agency's program must include training in all areas of emergency response in which the agency provides services.

(12) For the purposes of this section, "governmental fire agency" does not include municipal fire departments.

**76-13-104. Functions of department -- rulemaking.** (1) (a) The department has the duty to ensure the protection of land under state and private ownership and to suppress wildfires on land under state and private ownership. Fees may not be collected for this purpose except fees provided for in 76-13-201.

(b) The department may engage in wildfire initial attack on all lands if the fire threatens to move onto state or private land.

(2) (a) The department shall adopt rules to protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for that purpose, in declared emergencies, may employ personnel and incur other expenses when necessary.

(b) The department may adopt and enforce reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of part 2 and this part.

(3) The duty imposed on the department under this section is not exclusive to the department and does not absolve private property owners or local governmental fire agencies organized under Title 7, chapter 33, from any fire protection or suppression responsibilities.

(4) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and fire protection.

(5) The department shall cooperate with all public and other agencies in the

development, protection, and conservation of the forest, range, and water resources in this state.

(6) The department shall establish and maintain wildland fire control training programs.

(7) The department shall appoint firewardens in the number and localities that it considers necessary, subject to confirmation by the local county government, and shall adopt rules prescribing the qualifications and duties of firewardens that are in addition to those provided in 76-13-116.

(8) The department shall adopt rules addressing development within the wildland-urban interface, including but not limited to:

(a) best practices for development within the wildland-urban interface; and

(b) criteria for providing grant and loan assistance to local government entities to encourage adoption of best practices for development within the wildland-urban interface.

**76-13-116. Duties of firewardens -- liability.** (1) In addition to the duties prescribed by rule pursuant to 76-13-104(7), a firewarden appointed by the department shall promptly report all fires to the department, take immediate and active steps toward their extinguishment, report any violation of the provisions of Title 76, chapter 13, parts 1 and 2, and assist in apprehending and convicting offenders.

(2) A firewarden is not liable for civil action for trespass committed in the discharge of the firewarden's duties, and the provisions of 45-6-203 do not apply to a firewarden acting within the course and scope of the firewarden's duties.

(3) A firewarden who has information that shows, with reasonable certainty, that a person has violated any provision of Title 76, chapter 13, parts 1 and 2, shall immediately take action against the offender by making a complaint before the appropriate authority or by providing information to the appropriate county attorney and shall obtain all possible evidence pertaining to the violation.