

Fire Suppression Interim Committee

PO BOX 201706 Helena, MT 59620-1706 (406) 444-3064 FAX (406) 444-3036

60th Montana Legislature

SENATE MEMBERS
JOHN COBB
KEN HANSEN
RICK LAIBLE
DAVE LEWIS
GERALD PEASE

CAROL WILLIAMS

HOUSE MEMBERS STEVE BOLSTAD JIM KEANE KRAYTON KERNS RICK RIPLEY CHAS VINCENT BILL WILSON COMMITTEE STAFF
LEANNE HEISEL, Lead Staff
TODD EVERTS, Staff Attorney
DAWN FIELD, Secretary
BARBARA SMITH, Fiscal Analyst

MINUTES

WILDLAND-URBAN INTERFACE SUBCOMMITTEE

of the

FIRE SUPPRESSION INTERIM COMMITTEE

February 15, 2008

Room 137, State Capitol Helena, Montana

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request.** Legislative Council policy requires a charge of 15 cents a page for copies of the document.

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SUBCOMMITTEE MEMBERS PRESENT

SEN. RICK LAIBLE SEN. DAVE LEWIS SEN. CAROL WILLIAMS REP. STEVE BOLSTAD REP. RICK RIPLEY

SUBCOMMITTEE MEMBERS EXCUSED

REP. BILL WILSON

STAFF PRESENT

DAWN FIELD, Secretary BARBARA SMITH, Fiscal Analyst

AGENDA & VISITORS' LIST

Agenda, Attachment #1. Visitors' list, Attachment #2.

COMMITTEE ACTION

The WUI Subcommittee voted to request the full Fire Suppression Interim Committee to approve a budget transfer to the DNRC in order to fund the fire suppression cost study proposed by Headwaters Economics.

CALL TO ORDER AND ROLL CALL

00:00:40 Acting Chair SEN. LAIBLE called the Wildland Urban Interface (WUI)
Subcommittee of the Fire Suppression Interim Committee to order at 8:31 a.m.
The Secretary took roll, REP. WILSON was excused (ATTACHMENT #3).

Barbara Smith, Legislative Fiscal Analyst, Legislative Fiscal Division,
announced she would be staffing the meeting, due to Ms. Heisel's illness.

WILDLAND URBAN INTERFACE AND INSURANCE LENDING INDUSTRIES

00:02:55 Keith Lessner, Vice President, Loss Control, Property Casualty Insurance Association of America, discussed major points that shape the industry view of the role it plays in today's society:

- A major reason people purchase an insurance policy is to enjoy the benefits of risk spreading. The strength of insurance markets is directly correlated to economic development, so great care must be taken when considering the addition of social functions to insurance products, particularly it is not clear if the added expense will decrease losses.
- It is important to note that there is a significant distinction between insuring catastrophic risk and non-catastrophic risk, and there are significant business consequences for insurers insuring catastrophic risk, which by its nature, makes it difficult for insurers to price risk and to quantify the impacts of mitigation.
- Insurance companies all differ a great deal there is no common standard, particularly when it comes to mitigation.

Mr. Lessner then discussed the insurers' contribution to fire mitigation and several major points that shape industry view:

- The cost is an element in considering mitigation and is based mainly on equity and effectiveness.
- Uncertainty remains a key element to assessing mitigation strategies and
 is the biggest impediment to developing mitigation strategies. There is a
 broad consensus of what steps should be taken to mitigate wildfire but
 what is missing is information that documents how well these steps work
 and quantifies the impact of mitigation on insurance losses. Incentives,
 in particular, are difficult to create, due to the lack of information.
- There is a generic model used by insurance companies and other groups for addressing mitigation questions, which is to identify the stakeholders, coordinating all activities and eliminate duplication, jointly determine the needs, and develop programs on a shared basis. This approach uses what is known about mitigation of wildfires, applies it, and encourages the development of programs to meet unmet needs. It must be recognized that funding will always present a challenge.

Mr. Lessner discussed the specific questions provided to him by Leanne Heisel, Committee Research Staff, and his responses:

- What are companies or institutions doing to provide incentives to clients living in WUI areas to build to certain standards and maintain property around the home? Underwriting guidelines and standards are used to assess risk and price their insurance accordingly, which is one incentive. Another incentive used is to offer credits or debits to homeowners. Additionally, insurance companies assist homeowners through providing education through public communication efforts and by providing detailed and specific information to policy owners, such as fire information prepared by other associations.
- How do insurance companies define WUI areas? There is a tremendous amount of variation between companies. Most companies use some type of wildfire model to provide a hazard rating using information such as addresses and zip codes.
- What are incentives for insurance companies to have mitigation programs? Insurers promote mitigation because they compete for policy holders and homeowners will shop for the company that best meets their needs. Corporate citizenship is another factor, because insurance companies believe they have to help and generally believe that mitigation is important part of the business.
- Is there interest in expanding the insurance company's role in helping mitigate loss to property owners? The answer is clearly yes the awareness of this issue has been raised, and companies have greatly increased the amount of attention they give this issue.
- If the Legislature was to require some type of statewide designation of WUI and certain standards for building in these areas, what would the perspective of the insurance industry be? There would be a great deal of variation between companies but the majority of the reaction would be acceptance. It is already happening in some areas of the country.
- What is the industry's response to establishing a surcharge on insurance transactions to help pay fire fighting costs, as proposed by the governor of California. This is being strongly opposed by insurance companies and others and if approved, will increase insurance costs. The industry would not be in favor of that type of proposal, although many states are considering this.

Mr. Lessner said, in summary, that the role of the insurance industry in mitigation comes down to financial incentives, such as offering credits; and supporting, educating, and assisting policy holders. He said insurers would be happy to offer credits, if they knew what they are worth; but without knowing the worth, it will be difficult to do effectively. He provided the example of how mitigation credits were developed for reducing hurricane losses. Regarding wildfire mitigation insurers, Mr. Lessner suggested drawing insurers in to more public-private partnerships to work on this issue.

Committee Member Questions

00:30:54

SEN. LEWIS said the state paid millions for structure protection costs, which saved the insurance companies from having to pay policy owners' claims for burned homes and property. He said insurance companies are benefitting parties from this practice. He said it is not economically feasible for the state to continue this practice and asked Mr. Lessner to comment on how insurance companies could play a more active role in decreasing fire costs and reducing the potential for losses. Mr. Lessner said for example, insurance companies have worked to increase mitigation measures in hurricane prone areas. He said insurers are very committed to reducing damages and losses and at one time, insurance companies played a much bigger role in providing fire protection, safety inspections, and loss control services. This changed in the 1950s, when the federal government began to assume these functions. The government remains the driver for most safety education activities and programs, and the role of insurance companies today is primarily as a participant and contributor, and should not be viewed as the primary source of safety. The reality is that there is not enough money to fund all of the needed mitigation activities and unfortunately, difficult decisions will have to be made. It may take a severe and catastrophic event to sufficiently raise awareness of the seriousness of the fire issue before decisions are made on how to best address it.

00:40:08

SEN. COBB asked how he could find out what the major insurance companies operating in Montana are doing regarding mitigation. Mr. Lessner said that a local insurance provider could best provide that information. SEN. COBB said some types of insurance can't be purchased and asked what a business owner, for example, is to do in such instances. Mr. Lessner said most risks can be insured and that it is more a matter of finding a company that will underwrite a particular risk. He said it may cost a lot, but can usually be done.

00:41:28

SEN. COBB asked if mandatory decrees of state building code, versus local building control issues, has created problems in states that are approaching the issue in this way. Mr. Lessner said construction companies are very much in favor of instituting uniform building codes and that allowing some degree of local control is necessary in building codes.

00:43:33

SEN. LAIBLE said he has come to the conclusion, after listening to Mr. Lessner's testimony, that little will change until a catastrophic event forces the Legislature or the federal government to do something. Mr. Lessner said he is very optimistic that changes will be made before a catastrophic event and that there are a number of steps that could be taken. The biggest barrier to action is cost, which will have to be shared, because not a lot can be done if communities aren't willing to bear those costs.

SEN. LAIBLE asked what significant mitigation steps were taken by the insurance industry in hurricane-prone areas. Mr. Lessner said research was done on building science and building techniques, and that wind resistant building materials, for example, were developed to help mitigate damages. Additionally, programs were designed for retro-fitting homes to decrease damages and legislation was enacted to mandate certain building practices. SEN. LAIBLE asked if the insurance companies funded these programs or if

losses were mitigated simply by increasing costs. Mr. Lessner said the insurance companies were a participant in the process but did not drive the changes. He explained that the Institute for Business and Home Safety is funded by insurance companies and researches practices that will help mitigate damages and losses, and promotes public awareness and the use of better building materials and building practices. SEN. LAIBLE asked if standards are being created to require homeowners to take certain steps that would decrease risk. Mr. Lessner said every company's underwriting standards vary but that most companies are watching more closely how and where homes are being built.

- 00:49:02 SEN. WILLIAMS, in regard to comments made by Mr. Lessner about catastrophic events in Florida and other locations, said that many Montanans feel that the 2007 fire season was catastrophic and is the reason the Fire Suppression Interim Committee was created.
- O0:50:19

 Kirk Scott, Real Estate Loan Officer, First Interstate Bank, Helena, said a borrower is required to keep continuous insurance on the mortgage property from a state-approved insurance company, up to the value of the improvements, or no loan is made. If that insurance capability is not available to property and home owners in WUI areas, economic activity will be substantially reduced. Mr. Scott discussed particular examples in the Helena valley and explained the loan and insurance process that currently is followed in order for new construction to occur. He said there must be certainty for policies in WUI areas and the assurance that policies will be renewed at a reasonable price. He said insurance costs have risen dramatically in the last few years, affecting the affordability of housing. He suggested addressing using insurance riders so that homeowners who do not face the same level of risk are not affected. Mr. Scott said that the availability of insurance is necessary to the economic viability of an area and that without it, lenders will be unable to continue building and financing homes.
- 00:55:32 SEN. LAIBLE asked if lending institutions have requirements for inspections or conditions for loans that are dependent on location. Mr. Kirk said lending institutions rely on other professionals to value property and that most lenders would not visit property just for the purpose of determining fire risk.
- O0:57:50

 Barbara van der Mars, Supervisor, Policy Holder Services Division,
 Montana State Auditor's Office, said her office is the front line for consumers
 who are having problems with insurance companies. She said some insurance
 companies are already offering incentives to policy holders and gave an example
 of one company that is offering 10% or 20% premium rate reductions in
 premiums if the homeowners take certain fire mitigation steps, such as treating
 the home with fire resistant gel or removing trees or debris. She agreed that
 there are differences in what incentives are offered by companies and that some
 companies are more proactive than others in fire mitigation efforts. Ms. van der
 Mars said her office conducts consumer education programs and that education
 is a key element to improving the situation. She agreed that a premium
 surcharge, as discussed earlier in the meeting, would increase premiums.

- 01:01:41 Both SEN. COBB and SEN. LAIBLE asked for a list of insurance companies that are offering incentives to Montana policy holders and what is being offered. Ms. Smith said she would have to check with her legal staff before doing that because some of the information may be considered proprietary information.
- O1:02:35 **Dwight Easton, Farmers Insurance,** said Mr. Lessner did an excellent job of explaining the larger view point of assessing risks for premiums. He said it is very difficult to assess catastrophic risk but that each company tries to establish a competitive edge, in order to attract new customers and keep established ones. He said most companies offer risk mitigation programs but that there is no industry standard for risk acceptability, such as in WUI areas.
- O1:05:31 SEN. COBB asked if most homeowners in Montana are already taking mitigation steps. Mr. Easton said no, that the insurance companies have different ways of encouraging mitigation steps through the way they sell their its product or communicate with their insureds. SEN. COBB asked what more can be done to help homeowners prepare for the upcoming fire season, in order to avoid a catastrophic fire season and if insurance companies are working together in any way on this issue. Mr. Easton said there is no group effort underway but that individual insurers are working with their agents to make sure that acceptability of risk is addressed. SEN. COBB asked how he could find out specifically what each company is doing, in order to avoid duplication of efforts at the state level. Mr. Easton said that each insurance company would have to be asked. SEN. COBB asked Mr. Easton for a list of what measures Farmer's Insurance is taking. Mr. Easton said he would get that information.
- 01:08:15 REP. BOLSTAD asked if Mr. Easton foresees a change in how Farmer's insurance would treat insureds in WUI areas if mitigation measures were incorporated in the Montana Code Annotated. Mr. Easton said underwriting rules and rates are based on quantified risk and are prospective in nature, but that Insurance companies always look for ways to develop a product with a competitive edge. He said all factors would have to be considered in determining how underwriters would handle policies in WUI areas.
- 01:10:42 SEN. LAIBLE said local government requirements, such as building standards in WUI areas, must also be considered. He asked how this would impact the underwriting of insurance policies. Mr. Easton said this involves the ISO fire protection classification and said most, if not all, insurance companies use these standards in determining rules and rates.

LOCAL FIREFIGHTER POSITION

O1:13:57

Scott Waldron, Montana Fire Chiefs' and Fire Wardens' Associations, provided a detailed discussion of the recommendations prepared by the Montana County Fire Wardens Association, Wildland Firefighting and Structure Protection in Montana - Position Paper (EXHIBIT #1). Mr. Waldron provided copies of and discussed a Department of Natural Resources and Conservation (DNRC) table outlining the State's ten-year average for direct and county assist fire costs (EXHIBIT #2). He also discussed a draft copy of Community and Structure Fire Protection (end of EXHIBIT #1), and said that local agencies had no input on the

report, only state and federal agencies, which is of great concern. He concluded his remarks by saying that his associations recognize the complexities of the situation and understand the financial concerns involved. He said the associations thank the committee for its work, stand in strong support of the DNRC and of establishing sound policy to deal with this issue, and are willing to work on the issue.

01:41:34 SEN. COBB asked if copies of the Northern Rockies Coordinating Group (NRCG) recommendations for structure protection are available. Mr. Waldron said that a final report is not available at this time.

SEN. COBB asked if the trend is that the federal government is to leave more of the responsibility for structure protection to state and local agencies, is it to be expected that there will be fewer federal firefighters available. Mr. Waldron said he could not speak for the federal government, but said he did know that federal budgets are facing funding challenges and that efforts are understaffed at the initial attack level. He predicted the federal agencies would do less initial attack and establish fire lines only after fires have reached a certain size or are in a certain area. He discussed the Black Cat fire, in which federal firefighters were not allowed to engage in fire fighting efforts, and said it concerned him that there were occasions in which federal fire fighters were pulled off fires, which forced state and local fire fighters to go in. He said these situations created huge challenges, to local agencies in particular.

01:46:58 REP. RIPLEY asked about the second recommendations on page 8 of EXHIBIT #1, specifically how the Legislature can direct the federal agencies to comply with the recommendation. Mr. Waldron agreed it would be very difficult for the Legislature to direct the federal government to comply with state regulations and said that it would be the responsibility of the state's congressional leaders to seek compliance. He said the state can reinforce, at the federal level, the need for a funded, standard approach.

PUBLIC COMMENT

01:49:38 Brett Waters, Fire Chief, Central Valley Fire District, Belgrade Fire Department; Gallatin County Fire Warden; President, Montana County Fire Wardens' Association; and NRCG Chair and board member, referring to SEN. COBB's inquiry about community and structure protection recommendations, said that the draft copy of the Western Fire Managers and Western Governors' Community and Structure Protection Plan report was available two weeks ago. Mr. Waters said that while the NRCG name was on the draft report, the group had no input on the report, and said, like Mr. Waldron, this concerned the NRCG. He said he also received a DNRC document regarding Appropriate Management Response (AMR), dealing with local concerns (EXHIBIT #6, January 11, 2008 meeting). He said that as far as he knows, local concerns have not been indicated, and agreed with Mr. Waldron's assessment that while a lot of work is going on, there is not a lot of coordination between groups. He said it has been a struggle and that he is hopeful that the NRCG group will be able to increase the level of coordination and communication.

- 01:52:47 **Bill Mattice, Garrison,** discussed his concerns regarding creation of county defined WUI lands, a recommendation concerning the use of conservation easements, the risks and dangers of creating a "one size fits all" state law regarding zoning and subdivision regulations, insurance and funding issues, and the importance of forest and timber management (EXHIBIT #3).
- O2:04:00 SEN. LEWIS said he wanted the Subcommittee to be aware that ten percent of the northern part of Powell County has been placed in some type of conservation easement and that the Planning Board in Powell County aggressively pursues and supports easements requiring fire suppression. He said this provides a good example of what counties can do when allowed a degree of flexibility.
- 02:05:18 Glenn Marx, Executive Director, Montana Association of Land Trusts, said the Association submitted six pages of public comment and strongly supports healthy forest management practices. He discussed several highlights from the public comment and provided reasons for creating a new law that would require easements to include a forest management plan (EXHIBIT #4).
- Debra Foley, President, Montana Forest Owners Association, said her Association also provided public comment and supports the recommendations put forth by the Montana County Fire Wardens' Association (EXHIBIT #1). The Association also wants be on record in support of any legislative efforts to influence the federal government land and fire management practices. Ms. Foley said she personally lost her home and property as a result of federal mismanagement of a fire that started miles away from her home. She discussed several other specific examples of devastating fires that started on federal lands. She said the Association will support education programs for landowners and will continue to work to help with education efforts.
- O2:14:04 **Greg Van Horssen, State Farm Insurance,** presented State Farm's position on the WUI issue and mitigation steps that State Farm is taking. He said that consumer education, which includes land owners and home owners, is one of the most important tools to be used. State Farm is focusing on reducing the risk of loss in order to keep consumer costs down and examples of State Farm's efforts include working with individual policy owners in enhanced risk areas, providing internet sites with suggestions and checklists for property owners to decrease risks, and providing educational printed materials to policy owners. State Farm also works with other groups and communities, and helps fund programs such as *KEEP MONTANA GREEN* and *FIRE SAFE MONTANA*.

Mr. Van Horssen said that State Farm supports the concept of statewide building codes and supports funding through the general fund, as discussed by Mr. Waldron and others.

- 02:17:32 **Jacqueline Lenmark, American Insurance Association (AIA),** provided comments on behalf of the AIA:
 - The AIA supports comments made by Mr. Lessner and Mr. Waldron, however, the comments and questions that followed also raised concerns. The main focus of insurance companies is structure protection

and it is recognized that the industry may be expected to be a revenue source, which may cause conflict when trying to reach solutions on how to best handle this issue. Additionally, the policy question of whether or not structures should be allowed to be built in high risk areas must be answered, and that the answer will guide the direction of future policy.

- Regarding policy changes that can be made, the AIA recommends that fire management practices, fuels reduction efforts, the effect of long term fire suppression on fuel buildup and its affect on wildfire all be considered.
- Insurance companies contribute a great deal to fire suppression and protection through premium taxes and an additional tax on fire policy premiums, paid into the general fund.
- The AIA supports the use of general fund monies, as suggested by Mr.
 Waldron and Mr. Van Horssen, and would not support any additional tax or charge against the insurance industry.
- The AIA also supports establishing statewide building codes and efforts to develop a mechanism to increase the fire resistance of structures.
- The cost of insurance policies must remain an important consideration. Montana closely regulates insurance companies to make sure that the cost of a policy is not inadequate, excessive, or unfairly discriminatory. Also, if there are additional costs associated with fire suppression or protection, it must be passed on to the policy holder because state law will not permit one line of insurance to subsidize another line of insurance, nor will it allow a more profitable state to subsidize another less profitable state.
- 02:25:10 **Vicki Hucke, Montana Tourism Industry,** said tourism is vital to Montana's economy and read a quote from the February issue of the *Economist* magazine about the robust nature of Montana's economy. Ms. Hucke presented three recommendations for protecting Montana's tourism industry:
 - to maintain funding at fund at adequate levels for successful suppression, prevention, and response and recovery activities in order to preserve Montana's attributes:
 - encourage allowing a single declaration fo emergency during fire season that would be statewide and season long, in order to decrease negative media attention to the state; and
 - encourage all government agencies to consider tourism when developing fire communication plans.

Ms. Hucke said by working together, accurate information can be provided while minimizing the negative impact to tourism. She distributed copies of the Montana Promotion Division's *MONTANA: Big Sky Country* annual report containing facts and figures on how tourism impacts Montana's economy. (EXHIBIT #5).

02:28:10 Mr. Mattice strongly discouraged establishing statewide building codes as a mitigation measure, saying such action would either stop building in rural counties or bankrupt them. He said a better approach would be to authorize counties to create certain requirements, such as use of fire resistant building materials.

BREAK DNRC/HEADWATERS ECONOMICS STUDY PROPOSAL

- O2:42:40 Patty Gude, Headwaters Economics, Bozeman, reviewed the background information relating to the proposal, as presented at the January 11, 2008, meeting; and discussed the specific components of the proposal for new research into the cost of fire suppression in Montana's Wildland Urban Interface (EXHIBIT #6).
- O2:52:30 **Ted Mead, Chief Fire and Aviation Management, DNRC,** said the information and analysis would be very beneficial but that the DNRC does not have adequate staff to make it happen, so a contractor would be necessary in order to do the study. He said he does have concerns about the additional work load on DNRC but that the effort would be worth it in the long term.
- 02:53:10 Barbara Smith, LFD, said the FSIC budget does have adequate funding available for the study, but would have to be transferred from the FSIC to the DNRC to contract directly with Headwaters Economics. She said this decision was not noticed on the agenda, so a vote of support can be taken and a conference call can be scheduled within the next several days in order to make a formal motion and to vote.
- 02:54:03 SEN. LEWIS said he is in full support of the study proposal.
- 02:55:00 REP. BOLSTAD asked if DNRC staff would be taxed even with a contractor to conduct the study. Mr. Mead said yes, because staff is still dealing with fire issues from the 2003 and 2007 fire seasons, as well as preparing for the 2008 season. He said the study would be manageable with a contractor in place.
- 02:56:01 REP. RIPLEY asked if the contract would have to be offered out for bid or if the DNRC could directly contract with Headwaters Economic. Ms. Smith explained the current state procurement process and said the decision would be DNRC's. She said there have been instances in which the Request for Proposal (RFP) and the work has been done concurrently and still met the requirements of the law.
- 02:57:15 Ms. Smith said the Subcommittee must decide if it wants a conference call to ask the full FSIC to approve the study, and if so, the call must be noticed for three days in advance. She said the full Committee must approve the appropriation transfer.
- 02:58:20 SEN WILLIAMS said she also supports the study and said the information would benefit many legislatures to come.
- 02:58:40 SEN. COBB said proxy votes would be allowed for the conference call and that members could call staff within twelve hours of the meeting to leave their vote.
- 03:00:15 REP. BOLSTAD **moved** that the WUI Subcommittee ask the full FSIC Committee to approve an appropriation transfer that would allow DNRC to contract with Headwaters Economics to continue the research. The **motion passed** on a unanimous voice vote. Ms. Smith said a conference call would be scheduled for the following week. SEN. COBB instructed Subcommittee members to provide

suggested dates to Ms. Smith before leaving the meeting and to provide proxy information to Ms. Smith or Ms. Heisel in advance of the meeting.

- 03:02:10 Ms. Gude asked that consideration of time line be kept in mind and said it is important to get the study going as soon as possible, in order to meet the time line of May 30, 2008.
- O3:03:00 SEN. COBB asked how long it would take for the contract to be prepared if funding is approved in the next week. Ms. Smith said the appropriation transfer could take up to a week but the rest would be up to the DNRC. Mary Sexton, Director, DNRC, said DNRC would prioritize this issue and would get it completed as expeditiously as possible.

WUI OPTIONS - FIRST ROUND

- 03:04:06 Ms. Smith referred members to the blue table listing options for consideration by the WUI Subcommittee (EXHIBIT #7). She explained the process that would be used to prioritize and rate the options.
- 03:07:06 REP. RIPLEY asked that members rank the options and return them to Ms. Smith by the end of the day. Ms. Smith said the results will be compiled by Ms. Heisel and posted on the FSIC website.
- 00:54:54 Ms. Smith reminded members that the Contractors Subcommittee will be meeting on March 4, 2008, in Helena. She said more information will be available later.
- 00:55:42 Director Sexton provided copies of WUI Inspection Proposal submitted by the Department of Labor regarding option 19 (EXHIBIT #8) and explained the proposal.

ADJOURNMENT

03:59:08 With no further business before the Subcommittee, REP. RIPLEY, Acting Chair, adjourned the meeting at 11:45 a.m. Cl0429 8086dfxa.