

1 HOUSE BILL NO. 260

2 INTRODUCED BY T. BURNETT

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING STATE SPENDING FOR WILDLAND FIRE
5 SUPPRESSION; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO
6 ADOPT RULES FOR PRIORITIZING WILDLAND FIRE RESPONSE; PROHIBITING USE OF DISASTER AND
7 EMERGENCY SPENDING IF AN EXPENDITURE LIMIT HAS BEEN REACHED; AMENDING SECTIONS
8 10-3-312, 76-13-104, 76-13-115, AND 76-13-150, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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10 WHEREAS, Montana's forests are loaded with approximately 3.9 million acres of beetle-killed timber in
11 addition to the fuels that would normally be present; and

12 WHEREAS, costs to state taxpayers during the most expensive wildland fire season totaled \$50 million;
13 and

14 WHEREAS, a special session of the Legislature was required to appropriate funds to cover the state's
15 share of costs for that season retrospectively; and

16 WHEREAS, no mechanism currently exists in law to shield taxpayers from costs several times higher
17 than those incurred in previous wildland fire seasons; and

18 WHEREAS, retrospectively paying for an uncontrolled expense, such as wildland fire suppression for fires
19 of the scale that are reasonably anticipated, throws funding for other government functions into disarray.

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21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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23 **Section 1.** Section 10-3-312, MCA, is amended to read:

24 **"10-3-312. Maximum expenditure by governor -- appropriation.** (1) Whenever a disaster or an
25 emergency, including an energy emergency as defined in 90-4-302 or an invasive species emergency declared
26 under 80-7-1013, is declared by the governor, there is statutorily appropriated to the office of the governor, as
27 provided in 17-7-502, and, subject to ~~subsection~~ subsections (2) and (4), the governor is authorized to expend
28 from the general fund an amount not to exceed \$16 million in any biennium, minus any amount appropriated
29 pursuant to 10-3-310 in the same biennium. The statutory appropriation in this subsection may be used by any
30 state agency designated by the governor.

1 (2) In the event of the recovery of money expended under this section, the spending authority must be
2 reinstated to a level reflecting the recovery.

3 (3) If a disaster is declared by the president of the United States, there is statutorily appropriated to the
4 office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund
5 an amount not to exceed \$500,000 during the biennium to meet the state's share of the individual and family grant
6 programs as provided in 42 U.S.C. 5178. The statutory appropriation in this subsection may be used by any state
7 agency designated by the governor.

8 (4) If the expenditure limit for wildland fire suppression provided in 76-13-150 has been reached,
9 expenditures for wildland fire suppression may not be made from the appropriation provided in this section unless
10 the governor determines that human life is at risk from a wildland fire disaster or emergency and the expenditure
11 is made to preserve human life."

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13 **Section 2.** Section 76-13-104, MCA, is amended to read:

14 **"76-13-104. Functions of department -- rulemaking.** (1) (a) The department has the duty to ensure
15 the protection of land under state and private ownership and to suppress wildfires on land under state and private
16 ownership to the extent that funding under 76-13-150 allows. Fees may not be collected for this purpose except
17 fees provided for in 76-13-201.

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

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

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

25 (c) By July 1, 2011, the department shall adopt rules that provide:

26 (i) a method for analyzing state and private values and resources at risk for each wildland fire incident;
27 and

28 (ii) a method for prioritizing state-level wildland fire response for the purposes of 76-13-150(6).

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

1 any fire protection or suppression responsibilities.

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

4 (5) The department shall cooperate with all public and other agencies in the development, protection,
5 and conservation of the forest, range, and water resources in this state.

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

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

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

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

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

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16 **Section 3.** Section 76-13-115, MCA, is amended to read:

17 **"76-13-115. State fire policy.** The legislature finds and declares that:

18 (1) the safety of the public and of firefighters is paramount in all wildfire suppression activities;

19 (2) it is a priority to minimize property and resource loss resulting from wildfire and to minimize expense
20 to Montana taxpayers, ~~which is generally accomplished through~~ analyzing values and resources at risk and
21 responding accordingly, which may result in an aggressive and rapid initial attack effort;

22 (3) interagency cooperation and coordination among local, state, and federal agencies are intended and
23 encouraged, including cooperation when restricting activity or closing areas to access becomes necessary;

24 (4) fire prevention, hazard reduction, and loss mitigation are fundamental components of this policy;

25 (5) all property in Montana has wildfire protection from a recognized fire protection entity;

26 (6) all private property owners and federal and state public land management agencies have a
27 responsibility to manage resources, mitigate fire hazards, and otherwise prevent fires on their property;

28 (7) sound forest management activities to reduce fire risk, such as thinning, prescribed burning, and
29 insect and disease treatments, improve the overall diversity and vigor of forested landscapes and improve the
30 condition of related water, wildlife, recreation, and aesthetic resources; and

1 (8) development of fire protection guidelines for the wildland-urban interface is critical to improving public
2 safety and for reducing risk and loss."

3

4 **Section 4.** Section 76-13-150, MCA, is amended to read:

5 **"76-13-150. Fire suppression account -- fund transfer -- maximum expenditure.** (1) There is a fire
6 suppression account in the state special revenue fund to the credit of the department.

7 (2) The legislature may transfer money from other funds to the account.

8 (3) Funds received for restitution by private parties must be deposited in the account.

9 (4) Money in the account may be used only for the purpose of paying expenses for fire prevention,
10 including fuel mitigation, grants for the purchase of fire suppression equipment for county cooperatives, and fire
11 suppression costs.

12 (5) Interest earned on the balance of the account is retained in the account.

13 (6) (a) No more than \$50 million may be expended in any year from the account for the purposes of
14 wildland fire suppression.

15 (b) By May 1 of each year, the department shall notify owners of land described in 76-13-201(1),
16 agencies of the federal government that engage in wildland fire suppression, and governing bodies of counties,
17 cities, towns, and consolidated local governments that the limit provided in subsection (6)(a) is in place.

18 (c) If expenditures from the account total \$40 million in a year, the department shall notify the owners
19 of land described in 76-13-201(1), federal agencies, and local governing bodies that the limit may be reached and
20 that state wildland fire suppression may be suspended.

21 (d) If the limit described in subsection (6)(a) is reached, the director of the department shall order state
22 wildland fire suppression activities suspended and shall notify owners of land described in 76-13-201(1), federal
23 agencies, and local governing bodies of the suspension."

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25 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

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