



Fire Suppression Interim Committee

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

March 28, 2008

Room 102, 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.**

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

SEN. JOHN COBB, Chair
SEN. RICK LAIBLE
SEN. DAVE LEWIS
SEN. GERALD PEASE
SEN. CAROL WILLIAMS

REP. STEVE BOLSTAD
REP. JIM KEANE
REP. KRAYTON KERNS
REP. RICK RIPLEY
REP. CHAS VINCENT
REP. BILL WILSON, Vice Chair

MEMBERS EXCUSED

SEN. KEN HANSEN

STAFF PRESENT

LEANNE HEISEL, Lead Staff
TODD EVERTS, Staff Attorney
DAWN FIELD, Secretary
BARBARA SMITH, Fiscal Analyst

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

The Fire Suppression Interim Committee:

- approved nine recommendations to be put forth for public comment by the Contracting Subcommittee (EXHIBIT #1);
- approved sending a letter to State Fund and the Department of Labor and Industry (DOLI) to discuss workers' compensation for fire suppression contractors;
- approved options 1-7, and 9, as presented by the WUI Subcommittee (EXHIBIT #2);
- approved four options [4, 5, 10, and 13 (amended by REP. RIPLEY)], as presented by the Infrastructure Subcommittee (EXHIBIT #3);
- voted to not reconsider the MACo/Missoula County proposal to allow counties to prohibit development in high fire hazard areas;
- approved two versions of the *OUTLOOK OF FIRE* report (EXHIBIT #4 and EXHIBIT #5);
- agreed to send letters to Montana's Congressional delegates requesting their representative's presence at all future FSIC meetings'
- agreed to send letters of invitation to all legislators for upcoming field hearings; and
- approved sending letters as discussed by SEN. COBB (EXHIBIT #9).

CALL TO ORDER AND ROLL CALL

00:00:01 SEN. COBB called the Fire Suppression Interim Committee (FSIC) meeting to order at 8:30 a.m. The Secretary noted the roll, SEN. HANSEN was excused.

SUBCOMMITTEE REPORTS & RECOMMENDATIONS

Contracting Subcommittee

00:00:22 REP. KEANE reported on the Contracting Subcommittee. After several meetings with contractors and agencies, he said he has concluded that the biggest problem is a lack of coordination between state, federal, and local agencies, and private contractors. He discussed a list of nine recommendations formulated by the Subcommittee (EXHIBIT #1).

00:07:28 SEN. LEWIS announced that the United States Forest Service (USFS) and Department of Natural Resources and Conservation (DNRC) are sponsoring a contractor education session in Helena on April 14-16. He passed around an information sheet on the training session.

00:08:16 SEN. LAIBLE asked if REP. KEANE thought the coordination issue has been resolved so that local contractors can be certified and have a fair chance to work. REP. KEANE said that the USFS and DNRC both recognize that there are problems and that legislators need to keep pushing, but that improvements are in

progress. SEN. LAIBLE asked if there will be a training component and certification program for local contractors, so that those who make the effort to train and educate, and to invest in equipment, will have a fair chance. REP. KEANE said yes, that he and SEN. HANSEN are dedicated to making the system work better.

00:12:11 SEN. COBB asked if most of the recommendations would be resolved by September. REP. KEANE said that there may be one or two recommendations that take longer to put in place, but that the system will be improved for the next fire season. SEN. COBB asked REP. KEANE to keep the Committee updated.

Public Comment

No public comment was given.

00:12:56 REP. KEANE **moved** to send out the nine recommendations for public comment. The **motion passed** on a unanimous voice vote.

00:13:21 REP. KEANE said **moved** to send a letter to State Fund and the Department of Labor and Industry (DOLI) to discuss workers' compensation. The **motion passed** on a unanimous voice vote. REP. KEANE said that Mr. Everts would draft the letter.

Wildland Urban Interface Subcommittee

00:14:55 REP. WILSON, as Chair of the WUI Subcommittee, reviewed nine options that were selected to present to the full FSIC (EXHIBIT #2).

00:16:23 **Leanne Heisel, Research Analyst, Legislative Services Division, (LSD)**, said that a technical correction has been made to Option 8 and explained that in the *Proposal* column, the wording should be changed from "fire management plan", to "fuels management plan", to match the wording in the *Policy Description* column.

PUBLIC COMMENT

00:17:02 **Glenn Marx, Executive Director, Montana Association of Land Trusts**, said Option 8 was taken up late in the day and he believes that a misunderstanding occurred. He said he believes that the FSIC thought it was voting for a proposal that was pro-landowner and would decrease fire risk, but that in his opinion, Option 8 is anti-landowner and will actually increase firefighting costs. He explained that Option 8 adds a mandate to conservation easements and to landowners that is not applicable to landowners without forest lands with conservation easements, which will discourage the use of conservation easements. He pointed out that Option 6 - tax incentives for forest landowners - provides incentives to landowners, but that, in his opinion, Option 8 takes the incentives away. Mr. Marx said the real value of conservation easements is that they reduce and limit development in WUI, which would result in lower fire costs, and that it would be counter productive to implement Option 8. He asked the FSIC to reconsider the option and said his association would not support it.

- 00:21:56 REP. VINCENT asked if the ability for a landowner to enter into conservation easements is the right of a property owner. Mr. Marx said yes, that the conservation easement statute is part of private property law. REP. VINCENT said, in essence, by regulating the exercising of that right, it is actually a taking of a private property right. Mr. Marx said that while he could see how it could be construed that way, he was not qualified to answer that question. SEN. LAIBLE said it is his understanding that most conservation easements are already actively managed for fuels reductions, so Option 8 should not be a problem. He commented that incentives in other options may exist, but that the biggest incentive for entering into a conservation easement is the tax advantage an easement provides. SEN. LAIBLE said Option 8 is not draft legislation, but simply one option to be offered to the public for discussion. He said that it would be a mistake to take it off the table at this point.
- 00:25:59 REP. BOLSTAD agreed with REP. VINCENT that requiring conservation easements to include a fuels management plan would be a taking of private property rights, and that Option 8 would affect a landowner's rights. Regarding the tax incentive, REP. BOLSTAD agreed that it is a value, but said that keeping the land in trust for the future is also a major incentive. He agreed that there may have been some confusion about the true objectives of Option 8.
- 00:27:06 REP. KEANE said that he wants Option 8 to remain as a public comment topic.
- 00:28:39 SEN. LEWIS said that he did not support Option 8 and that it would affect the good work going on in Powell County. He **moved** to remove Option 8 from further consideration.
- 00:30:11 REP. RIPLEY said that, while he likely would not support it as a legislative proposal, Option 8 should be left on list as a discussion topic at this point because it could be a part of the solution to control fire costs. He said that not all conservation easements will require this measure and that some conservation easements don't require any management at all. He agreed that Option 8 impacts private property rights.
- 00:31:27 SEN. WILLIAMS said that she thinks the issue is under control and sees no need for Option 8, and would vote to remove Option 8.
- 00:32:46 SEN. COBB noted that the conservation easement issue will be included in the 40-page summary of public comment.
- 00:33:23 SEN. LEWIS restated his motion to remove Option 8 from consideration. (SEN. WILLIAMS left the meeting to contact SEN. HANSEN about his proxy.)
- 00:34:13 SEN. LAIBLE said that he didn't think the role of the FSIC was to limit what would be presented to the public for comment, but rather the goal was to explore many possible solutions. REP. WILSON said that the Committee has already limited what would be presented to the public because of the action the Subcommittees took the previous day to pare down their lists.

- 00:36:18 **Harold Blattie, Executive Director, Montana Association of Counties (MACo)**, asked the Committee to reconsider the option to prohibit development in high fire hazard areas (see March 27 WUI Subcommittee meeting, EXHIBIT #1 - *Options for Consideration*). He said MACo could support that option if the wording was changed from "require" to "allow". Ms. Heisel clarified that the new wording would read, "would allow local governments to prohibit development in high fire hazard areas". Mr. Blattie said under current law, counties can deny subdivisions under certain conditions, however, defense attorneys inevitably advise counties to not deny a subdivision, but rather to "conditionally approve it to death". He said it is time to acknowledge that there are areas that simply should not be developed, and that the option would help this to happen. He asked that the Committee reconsider the option and reinstate it for further consideration.
- 00:40:19 SEN. LAIBLE said that SB 51 has a component for prohibiting development because of fire risk, and would also allow mitigation to minimize danger. He said he is uncomfortable with telling owners that they can't develop their land.
- 00:41:17 Mr. Blattie said language in current law does allow counties to prohibit a subdivision in a high risk area unless the risk can be mitigated, but that defense attorneys have advised counties that the language isn't strong enough to deny a subdivision. He said he would like more specific language put in statute, and that the public should be allowed to speak on this issue.
- 00:43:24 **Glenn Oppel, Montana Association of Realtors (MAR)**, said there are ways to prohibit subdivisions in 76-3-501(9), MCA; and 76-3-504(e), MCA.
- 00:44:43 **Linda Stoll, Missoula County**, said that Missoula County supports MACo's request and agreed that the current language needs to be strengthened. She challenged the FSIC to find a single county that has denied a subdivision in a high fire risk area. She said that she was asking that the same consideration given to flood plain hazards also be given to high fire risk hazards. Ms. Stoll also asked about modifying subdivision law to make creating zoning districts easier, which was also eliminated from further consideration at the previous day's WUI Subcommittee meeting. She said, on behalf of Missoula County, she was asking the Committee to include the options that would amend current zoning statutes to allow no protest provisions, and to strengthen statutory language to prohibit development in high risk fire hazard areas.
- 00:49:38 **Tim Ravendal, Broadwater County Commissioner candidate**, said he is concerned about the potential for private property rights takings in some of the options discussed by the WUI Subcommittee. He said that some may not be outright taking, but by regulation. He urged the FSIC to carefully consider that in each option considered, and said that any unfunded mandates on local governments would be a volatile issue.
- 00:51:01 **Greg Van Horsen, State Farm Insurance**, asked to discuss the option requiring insurance companies to provide incentives (Option 5, EXHIBIT #1 - March 27 WUI Subcommittee meeting and Option 3, EXHIBIT #2 at this

meeting). He said, on behalf of State Farm Insurance, that he wants the Committee to clearly understand that State Farm does not have a problem with incentives, but that the testimony he gave to the WUI Subcommittee at the previous day's meeting was that State Farm has a business philosophy that resists requirements, because it already provides incentives to its consumers. Mr. Van Horssen referenced the documents he provided to the previous day's meeting (EXHIBIT #2, 3/27 WUI Subcommittee meeting), and said that information outlines the incentives provided by State Farm. State Farm is willing to discuss what insurers can do and has participated in the process to date. However, Mr. Van Horssen said, State Farm will resist any effort or suggestion that it should price these risks differently than the actual risk represented. He said it is State Farm's position that the 1,200-plus property insurers in Montana are already addressing this issue, and he asked the Committee to remove Option 3 from further consideration.

00:56:07 **Mary Sexton, Director, DNRC**, pointed out the extreme escalation of fire fighting costs and that much of the cost can be attributed to fighting fire in WUI areas. She compared the cost of the Chippy Creek fire (about \$200 per acre), which was primarily forested lands with little WUI, to the cost of the Jocko Lake fire (about \$1200 per acre), which had a great deal of WUI lands. She said that while she would not recommend specific measures, it is clear that changes have to be made. She said that proactive steps are needed and agreed that businesses may be impacted, but said the serious issues have to be dealt with.

00:57:53 **Jacqueline Lenmark, American Insurance Association (AIA)**, said that she endorsed the comments by Mr. Van Horssen, and asked to present an additional suggestion. If the insurance issue must remain, consider amending it so that it becomes a vehicle for the insurance industry to participate with the state through an invitation, and not a mandate. She said insurance companies operating in Montana have a strong record of providing education and support on important issues, and have always done so voluntarily. She said that insurance companies will continue to resist efforts by the State to impose mandates, and that an invitation to participate would be much more effective.

01:01:15 **Pat McKelvey, Firesafe Montana**, said he was available for questions, and that he is working to establish local networks and programs.

01:01:53 SEN. WILLIAMS said that SEN. HANSEN's proxy authorization would be available in a few minutes.

Infrastructure Subcommittee Report

01:02:54 SEN. COBB reported that the Infrastructure Subcommittee approved Options 4, 5, 10, and 13, which included a request from REP. RIPLEY to add that federal government reimbursements would go into the Fire Suppression Fund (EXHIBIT #3). He **moved** to accept Options 4, 5, 10, as written; and Option 13, as amended by REP. RIPLEY. The **motion passed** on unanimous voice vote.

01:05:47 The Committee returned to the motion made by SEN. LEWIS to approve the WUI Subcommittee options (see EXHIBIT #2), with the exception of Option 8 - require

fuels management plans for conservation easements. SEN. WILLIAMS announced that she received SEN. HANSEN's proxy (ATTACHMENT #4). The **motion passed** on an 8-4 roll call vote, with SEN. LAIBLE, REP. KEANE, REP. RIPLEY, and REP. KERNS voting no (ATTACHMENT #5).

- 01:07:55 Ms. Heisel said that she would combine the approved recommendations from all three subcommittees into one master list of options. SEN. WILLIAMS **moved** to reconsider the MACo/Missoula County recommendation to "allow" local governments to prohibit development in high fire hazard areas (Option 8 from the previous day's WUI Subcommittee's option list). She said that it is essential to include discussion of high fire risk areas and that the option would give counties another tool with which to deal with high fire hazard areas. REP. WILSON agreed, saying that this issue has been an emotional and persistent topic, and should be a discussion point.
- 01:10:24 SEN. LAIBLE said that he was concerned that local governments may be allowed to prohibit development at their discretion, and that it was also requested that protest provisions be eliminated. He said that these measures would lock out the public and that the Committee ought not support such measures. He said it appeared that county attorneys who don't want to deal with lawsuits were driving these requests.
- 01:11:47 REP. VINCENT agreed with SEN. LAIBLE, and said that SB 51 gave a lot of flexibility to counties in adopting growth plans that direct development.
- 01:12:38 REP. WILSON asked Mr. Blattie to comment on SEN. LAIBLE's comment. Mr. Blattie said that under Option 8, it would be up to each county to decide if it wants to map and define high fire risk areas, and that factors such as vegetation density, slopes, ingress and egress, would be considered in the evaluation. He said the exact criteria would have to be fleshed out. Mr. Blattie predicted that the Committee would hear about this issue from the public, whether or not it was a Committee proposal. He said it would look better to the public if the Committee put forth the proposal.
- 01:14:54 REP. BOLSTAD disagreed that county attorneys were the driving force behind this option and said that as a county attorney, he has not heard anything about this issue. He said there are some measures in place to use for land use planning, but that having additional tools to use in denying a subdivision would take some of the pressure off local governments. He agreed that there does need to be some sort of public process to protect property rights.
- 01:16:41 The **motion failed** on a 4-6 roll call vote, with SEN. LAIBLE, SEN. LEWIS, REP. KEANE, REP. KERNS, REP. RIPLEY, and REP. VINCENT voting no (ATTACHMENT #6).

FIRE OUTLOOK REPORT

- 01:18:44 SEN. COBB presented two draft documents and said the color-coded report contains verbatim comments as received by agencies and legislators (EXHIBIT

#4), and that the black and white report contains a summary of the comments and conclusions (EXHIBIT #5). SEN. COBB said that both versions would be sent out for public comment. **Barb Smith, Fiscal Analyst, Legislative Fiscal Division (LFD)**, explained that she tried to take consensus areas into consideration as she compiled the comments. SEN. COBB **moved** to send both versions out for public comment.

Public Comment

No public comment was given.

- 01:24:05 In response to a request from SEN. LAIBLE to discuss the USFS comments, SEN. COBB said he plans to request a formal meeting with upper level USFS officials to get a better understanding of the USFS position, and that because the USFS is the biggest player in this issue, it is important to get its perspective.
- 01:25:44 SEN. COBB's **motion passed** on a unanimous voice vote.
- 01:26:44 SEN. COBB referred to the 38-page summary of public comment (EXHIBIT #6) and said that the first four pages list Committee tasks for April and possible recommendations and options. He said the actual public comment summary begins in the middle of page 4 and that the summary would be updated to include the conservation easement issue. SEN. COBB **moved** to send the summary of the public comment only out for additional public input (pages 4-38).
- 01:28:44 In response to a question from SEN. LEWIS regarding how copies of the lengthy summary would be provided to the public, SEN. COBB said that the document will be posted on the FSIC website. Ms. Heisel said that she routinely sends out interested persons notices and that the summary would be listed as being available on the FSIC website. She said hard copies will be available for those with no access to the website, and that copies can be provided to local libraries or to local fire departments for dissemination in each community. SEN. COBB said that the Committee members who will be chairing the hearings in their communities can also have input on how best to get the information out.
- 01:32:05 REP. RIPLEY thanked SEN. COBB for the great deal of time that he spent in compiling the comments. He said that SEN. COBB did an outstanding job of summarizing the information.
- 01:33:56 SEN. LEWIS said that the information contained in the first four pages is important information and asked that they be included also. SEN. COBB said that the first few pages were written by him, and that he does not want the public to think that they are part of public comment. Ms. Heisel said that she could separate the documents into two reports. SEN. COBB agreed to having the summary for public comment include *Possible Recommendations, comments, and options*, beginning on page 2 of EXHIBIT #6. SEN. COBB's **motion passed** on a unanimous voice vote.
- 01:37:18 REP. KEANE said that there has been discussion in previous meetings about requesting Montana's Congressional delegation to attend all future FSIC

meetings and asked that this be done. REP. WILSON agreed, and also suggested that all legislators also be invited to attend the field hearings. REP. KEANE said that he wanted it to be clear the Committee was requesting the congressional delegates' attendance, not merely inviting them. SEN. WILLIAMS agreed that congressional support is needed to deal with USFS and other federal issues related to fires. She said that the Infrastructure Subcommittee discussed sending a letter to Montana's congressional delegation to that effect. SEN. COBB asked SEN. WILLIAMS to write a draft letter to the congressional delegation and to provide copies to all Committee members. He asked REP. WILSON to write a draft letter to be send out to legislators, and to provide copies to the FSIC.

FIELD HEARINGS

- 01:39:40 Ms. Heisel distributed copies of the FSIC work plan (EXHIBIT #7). She referred members to pages 2 and 3, listing the field hearing schedule approved by the Committee. She said she would assist with planning the agenda and work with local officials to plan each meeting.
- 01:40:49 SEN. COBB said that a meeting with USFS officials may take place at the Hamilton hearing/meeting. SEN. LAIBLE reported that the Hamilton meeting will be held at the Bitterroot River Inn and that the agenda is still in progress. He said that local DNRC officials, Helena DNRC officials, the Bitterroot National Forest Supervisor, and other guests would be invited. He said he expected to have a large public contingent in attendance as well. The Committee will meet on the first day and tour burn areas on the second day. SEN. LAIBLE said that he will work with Ms. Heisel on public notice requirements.
- 01:42:47 SEN. COBB said that REP. WILSON will chair the May 16 hearing/meeting in Lewistown, as well as set the agenda. REP. WILSON said he would work with Ms. Heisel.
- 01:45:18 SEN. COBB said that SEN. PEASE and SEN. HANSEN would co-chair the May 30 hearing/meeting in Miles City. He said he has contacted the DNRC Regional Manager in Miles City and that the meeting is tentatively scheduled to be held at the Community College. He said that the agenda would be set by SEN. PEASE and SEN. HANSEN.
- 01:47:34 SEN. COBB said that SEN. WILLIAMS will chair the June 19 hearing in Seeley Lake; and that REP. VINCENT will chair the Libby and Thompson Falls hearings on June 19 and 20. REP. VINCENT suggested that the Committee members bring casual clothing for the tour portion of the meetings.
- 01:50:03 Ms. Heisel said that FSIC members will be encouraged to travel to active fires for tours in July and August, and that DNRC staff will assist with arrangements. She said the final FSIC meeting will be held in September to finalize recommendations. She asked that time be allocated at the Libby hearing for staff direction, since the full Committee would not meet again until September.

01:51:05 SEN. COBB asked Mr. Harrington to explain how the DNRC will handle fire tours for FSIC members. Mr. Harrington said it would be good to know the interest of each member, and that he would work with Ms. Hiesel on arrangements. He asked that the members provide their contact information, and said that he would alert members as fires arise.

01:52:51 SEN. COBB discussed a list of letters (EXHIBIT #8) that he would like to have prepared. The list included letters to:

- various state, federal, and local governments, including fire departments, concerning the upcoming fire season;
- local governments, local entities, water shed entities, and local fire departments requesting that they meet with state and federal fire agencies to discuss communications and fire preplanning;
- local governments and state and federal firefighting agencies requesting that they review the draft list of comments made by committee members and the public;
- the Department of Commerce, DNRC, and federal agencies regarding tourism concerns;
- Plum Creek Timber to request a more specific plan for fire protection and cost payment plan; and
- insurance companies/association requesting their assistance in working with policy holders in WUI areas to better prepare for and protect their homes.

01:56:38 REP. BOLSTAD proposed that a letter also be sent to President Bush's administration in protest of cuts made to USFS funding for fire suppression. SEN. COBB asked him to prepare a letter and send it out to the Committee for review. REP. WILSON said that members of both political parties should work on wording the letter. SEN. COBB he would approve the general concept of a letter but that the final approval would be done later. He said he would like to reserve the right, as Committee Chair, to back off or revise if he has objections. SEN. COBB **moved** to approve having staff draft the letters, as listed in EXHIBIT #8. The **motion passed** on a unanimous voice vote. Ms. Heisel said that staff will prepare the letters for review by FSIC members, with the exception of SEN. WILLIAMS' letter to the congressional delegation asking that they attend future FSIC meetings.

PUBLIC COMMENT

No public comment was given.

02:02:02 SEN. COBB reminded members that the next meeting is scheduled for April 28 and 29 in Hamilton. Ms. Heisel said that she has received additional public comment and distributed copies of letters from Ron Downey of Troy, Montana (EXHIBIT #10), the Confederated Salish and Kootenai Tribe (EXHIBIT #11), and anonymous comments submitted on the FSIC website (EXHIBIT #12).

ADJOURNMENT

02:03:09 With no further business before the Fire Suppression Interim Committee, SEN. COBB adjourned the meeting at 10:35 a.m.

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