



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

INFRASTRUCTURE SUBCOMMITTEE

March 27, 2008

Room 102, State Capitol
Helena, Montana

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COMMITTEE MEMBERS PRESENT

SEN. JOHN COBB, Chair
SEN. RICK LAIBLE
SEN. DAVE LEWIS
SEN. CAROL WILLIAMS
REP. JIM KEANE
REP. RICK RIPLEY
REP. CHAS VINCENT
SEN. GERALD PEASE

COMMITTEE MEMBERS EXCUSED/ABSENT

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 Infrastructure Subcommittee:

- approved fire suppression options 4, 5, 10, and 13 (with amended language, as requested by REP. RIPLEY); and
- approved sending a letter of thanks to the Budget Office for expediting items 1 and 2 for upcoming fire season, and a separate letter would be written, which would include information provided by Mr. Harrington, to request up to four incident business advisors.

CALL TO ORDER AND ROLL CALL

00:00:01 SEN. COBB called the meeting to order at 1:00 p.m. **Barbara Smith, Fiscal Analyst, Legislative Fiscal Division (LFD)**, reviewed the agenda.

UNFUNDED FIRE COSTS FOR LOCAL GOVERNMENTS

00:01:05 **Cheryl Liedle, Sheriff, Lewis and Clark County**, said the 2007 fire season was disastrous in Lewis and Clark County, with fires that began early in the season and continued until late in the fall, and burned thousands of acres of federal, state, and private lands. She said the sheriff is charged by statute to keep the peace in the county, which includes securing hazards resulting from fires. Sheriff Liedle reviewed three major fires that burned in the county - the Ahorn Fire, the Meriwether Fire, and the Little Wolf Creek Fire.

Ahorn Fire - Sheriff Liedle said the Ahorn fire was particularly difficult because of the two-hour travel time to the Augusta area. Evacuations were difficult and in some cases, officers' lives were put in jeopardy by having weapons drawn on them in the process. The total cost of the Ahorn Fire to Lewis and Clark County was in excess of \$100,000 dollars. Request for reimbursement of eligible expenses (\$56, 324) has been submitted to the United State Forest Service (USFS), but to date, no reimbursements have been received. Sheriff Liedle said that \$41,048 of the amount was labor costs, and noted that repeated requests for reimbursement have been made.

00:06:23 Meriwether Fire - Sheriff Liedle said it was much the same as the Ahorn Fire, that deputies had to carry out evacuation procedures, calm the public, and provide security and patrols around the clock. The total cost to Lewis and Clark County was approximately \$50,000, with billable costs to the USFS of \$17,002, of which \$13,895 was labor costs. Again, the bill has been submitted, but not reimbursed to date.

00:07:44 Little Wolf Creek Fire - Sheriff Liedle said similar efforts were required of her department in the Little Wolf Creek Fire as for the other fires. The costs totaled \$25,000, and billable hours to the USFS totaled \$9,033, of which \$7,152 was labor costs. No reimbursement has been received yet.

00:08:45 Sheriff Liedle said she has received several communications from the USFS requesting additional information and requests to cut the bill. She said the

amount billed is the absolute bottom line for the department and, because no reimbursements have been received, she has been forced to lay off deputies and eliminate all overtime. Sheriff Liedle said these types of fires are becoming more and more of a problem to local governments because of unreimbursed costs.

00:10:29 SEN. LEWIS asked if Lewis and Clark County has an agreement with the USFS. Sheriff Liedle said that the Lewis and Clark County has agreements with the Helena National Forest and the Lewis and Clark National Forest. SEN. LEWIS asked what the USFS wants. Sheriff Liedle said the USFS hasn't said it will not pay the bills, but that it keeps asking for more detailed information without sending reimbursement.

00:11:09 SEN. LAIBLE asked if these fires created what Sheriff Liedle considered a state of emergency. Sheriff Liedle said yes. SEN. LAIBLE asked if the Governor can authorize the National Guard to provide some of the services that the Sheriff's Department had to provide. Sheriff Liedle said the National Guard did provide services, and were a huge help. SEN. LAIBLE asked if the costs to Lewis and Clark County would have been higher without the assistance from the National Guard. Sheriff Liedle said yes, that costs would probably have tripled without National Guard assistance.

00:12:08 REP. RIPLEY asked if the agreement will allow the Sheriff's Department to pursue reimbursement through other avenues, if checks aren't forthcoming. Sheriff Liedle said that she didn't know, but that she would continue pursuing reimbursement because the citizens of Lewis and Clark County should not have to bear the brunt of the costs. REP. RIPLEY asked how the FSIC could help. Sheriff Liedle said she needs relief to the costs of fighting fires on a local level, either through interagency agreements, or through amendments or statutory changes. She said that the responsibility of fire costs, in her opinion, lies with where the fire starts.

00:14:18 REP. KEANE asked if the agreements provide for interest to accrue on the unpaid balance. Sheriff Liedle said that the Department has not applied interest charges and added that administrative costs have been denied. REP. KEANE said that interest should be added. Sheriff Liedle said she would consider that.

00:15:04 SEN. COBB asked Sheriff Liedle to provide copies of the agreements and of the documents and communications that have occurred since the fires, as well the names of the USFS people she has been working with. Sheriff Liedle said she would provide the information. SEN. COBB said that it is important to have this information, particularly if it becomes apparent that other counties are experiencing similar problems. SEN. COBB asked if there are agreements with the state for fire costs. Sheriff Liedle said that agreements with the state are in place, and that bills submitted to the state have been paid. SEN. COBB asked for information on those bills and reimbursements also.

00:17:56 **Leanne Heisel, Research Analyst, Legislative Services Division (LSD)**, asked Sheriff Liedle to elaborate on statutory changes that would improve the situation. Sheriff Liedle said that she would like the agreement language to be

tightened up to make certain that relief must be provided by those who entered into the agreement with the county.

- 00:19:27 **Richard Van Auken, County Fire Chief, Teton County**, discussed the broader impact of 2007 fire season on Teton County, including both quantitative and non quantitative costs (EXHIBIT #1).
- 00:32:36 SEN. COBB asked why the Department of Natural Resources and Conservation (DNRC) and not the USFS, reimbursed Teton County. Sheriff Van Auken said that particular agreement was worked out with DNRC because of structures in the area, private ground, and other jurisdiction issues; and because of the USFS's philosophy that it will not provide structure protection. SEN. COBB asked if there was conflict between Teton County and the federal government, and if Teton County refused to sign a declaration or agreement with the USFS. Sheriff Van Auken said yes, that there was a disagreement, and that in his opinion, the County perspective was not being listened to. Ultimately, he said, an agreement was reached and the declaration was signed.
- 00:34:34 SEN. COBB asked if Teton County meets with the local USFS annually to discuss concerns, and if so, does the USFS respond to the county's concerns. Sheriff Van Auken said that he an annual meeting is held in Great Falls, and that in theory, agreements are fairly easy to reach, but that in reality, agreements rarely play out in the way intended. SEN. COBB asked how Sheriff Van Auken's concerns could be handled differently, so that better results can be obtained. Sheriff Van Auken said he did not have a good answer, but that one approach would be to bring local government people on a fire as part of the USFS organization, as New Mexico is doing on certain fires. SEN. COBB asked when the annual meeting is usually held and if the meeting format allows everyone to voice concerns. Sheriff Van Auken said the review is for agencies and that local governments do not have a voice, but can listen. He said a face-to-face discussion is needed because of the disconnect between local, state, and federal governments during the followup. SEN. COBB said that he is not trying to find fault, but is trying to find a way to improve communication and the system.
- 00:39:10 REP. VINCENT asked if Teton County has grizzly bear habitat. Sheriff Van Auken said yes. REP. VINCENT said that it is ironic that grizzly bear habitat is the impetus for a lot of AMR practices that are occurring.
- 00:40:01 **Jerry Meyer, USFS**, said that he is not in a position to respond to all of the statements, but that he would like to say that the USFS is very aware of wildfire's impacts to local governments, and that it tries to involve them whenever possible. Mr. Meyer said that the USFS feels that it is dealing with a fire prone environment and that fire is inevitable. He said that federal entities cannot be blamed more than any other entity, but was disappointed to hear that there aren't more follow-up opportunities for local governments and that reimbursements are going so slowly. He said that he personally plans to follow up on the issues discussed by Sheriff Liedle and will work to get a dialog going.

- 00:42:13 REP. KEANE asked Mr. Meyer to provide copies of the response as to why the bills have not been paid. Mr. Meyer said that he would do that.
- 00:42:38 REP. VINCENT said that there are three different management options within Appropriate Management Response (AMR) but that many of the current management plans in place can use only one of the options because of circumstances, such as grizzly bear habitat, for example. Mr. Meyer disagreed, saying that other factors, such as weather conditions, also limit options on how to address a wildfire. REP. VINCENT said that his point is that a fire's outcome depends on the ability to get in and fight it aggressively from the very beginning. Mr. Meyer agreed that REP. VINCENT had a point, but said that the problem is so extensive that the USFS can't intervene everywhere.
- 00:45:21 SEN. COBB said that he condensed all of the public comment into a 38 page manageable document which would be provided at the next day's meeting. He said that much of the summary contains helpful comments and that many of the comments suggested policy changes. One of the main issues is how to improve communication and policies that will improve understanding of agencies and the processes used for fighting fires. He said that many components in managing fire costs are tied together and that it is essential that the Committee gain a good understanding of all of these factors, in order to make meaningful changes. Mr. Meyer said that he thinks that communication has improved over the years, and will continue to do so. SEN. COBB said it is important to resolve as much as possible before the 2008 fire season begins. Mr. Meyer said that the Northern Rockies Coordinating Group (NRCG) has worked to clarify definitions about structure protection and will have a clear policy. SEN. COBB said it would be a wise move for the USFS to hold public hearings so that people can ask questions and have input. Mr. Meyer said that the USFS intends to be involved.
- 00:50:08 SEN. LAIBLE said the NRCG is working on a policy for structure protection and asked when it will be available for review. He said it concerns him that the state is headed for another fire season with the issue of structure protection still unresolved. Mr. Meyer said that the USFS is not really changing existing policy, but is clarifying existing policy, which is that federal agencies will not engage in direct structure protection, because they have neither the skills nor the equipment to do so. He said the role of federal agencies in structure protection is to prevent fire from getting close to structures, and to support the local firefighting agencies when it does occur.

STAFF PRESENTATION OF OPTIONS, SUBCOMMITTEE DECISIONS

- 00:52:40 Ms. Smith said that it was time to finalize what options the Subcommittee wished to put forth to the full FSIC and reviewed fire suppression funding options (EXHIBIT #2). Ms. Smith said that at the February 15 meeting, the Subcommittee chose four options - 4, 5, 10, and 13 - to present to the full FSIC for consideration as public comment topics at the field hearings. She asked how the Subcommittee wished to proceed. SEN. LEWIS said that he has given a great deal of thought to the fact that Montana cannot spend \$80 million every biennium on fire costs. He suggested creating a cap for the amount that can be spent on fires, and when that amount is depleted, state-supported fire

suppression efforts would cease. This would shift the responsibility to the managers of forests to do fuel reductions and to those who live in high-risk areas to take the necessary steps to protect themselves. He said it is a huge step and doesn't know exactly how it would be done, but would like to discuss it as an option. Agencies would be instructed to set their budgets very carefully and warned that the state would not step in with a blank check. SEN. COBB said it is a radical idea but agreed that the state can't keep spending. SEN. COBB said unless the federal, state, and local entities come together to resolve certain issues, it will be hard to know how to budget and that many issues are tied together, which complicates things even further.

01:02:16 SEN. WILLIAMS said that the Subcommittee should continue support of the four options selected in February, but also noted that one thing that was not discussed was the option of giving budget authority, rather than appropriating money from the fire suppression account. She said she has discussed this with Scott Seacat, Chief Auditor, Legislative Audit Division (LAD), and has asked him to work with Ms. Smith and Ms. Heisel to create a proposal for the next meeting, with the Subcommittee's approval. SEN. COBB said that Mr. Seacat could present at the April meeting and noted that the Subcommittee is not finalizing anything right now, but simply formulating draft options.

01:04:02 REP. RIPLEY asked to discuss Option 13 and his request to consider amending it to require that Federal Emergency Management Agency (FEMA) reimbursement funds be deposited into a special revenue account. He said that Mr. Everts has looked into how to set that up. **Todd Everts, Staff Attorney, LEPO**, said it would not be difficult to set up a federal special revenue account for FEMA reimbursement funds to be deposited in, that would then be used to reimburse expenditures from that account. Ms. Smith said it must be remembered that the state has to pay its obligations in full, prior to FEMA reimbursements. SEN. LEWIS said the suggestions are fine, but that he favors more of "behavior modification" approach that would force agencies, landowners, and others to take more responsibility for mitigation steps. He said the state has to set a limit of how far it will go to provide protection and that homeowners and developers must take more responsibility. SEN. LEWIS said that he would work on this policy, if agreeable to the Subcommittee.

01:09:15 SEN. WILLIAMS said she agrees with SEN. LEWIS that behavior modification is needed and suggested that the two of them work with groups before the next meeting. She said that she is disappointed that so few groups have come forth and that it is time to reach out to the interest groups and get them involved.

SEN. COBB **moved** to accept Options 4,5,10, 13, with the caveat that they may change because of other factors. SEN. LAIBLE asked if the motion included SEN. LEWIS's behavior modification proposal. SEN. LEWIS said he would like to work with SEN. WILLIAMS and that his idea would fit in with one of the existing four options. SEN. LAIBLE said it may spur the insurance companies to cooperate more. He said it is an important proposal and that he would like it to be a stand-alone proposal. SEN. COBB said it may be eventually but that decision would be made later. Ms. Smith said that staff could have draft

documents of the general budget authority idea from Mr. Seacat and SEN. LEWIS's cap proposal prepared for the April meeting, and that a decision could be made on the first day, in advance of the public hearing. SEN. COBB said a conference call is an option also, if the proposals are prepared in time. Ms. Smith said that was not an option, because she would be at training.

- 01:13:20 REP. KEANE said that he would not support a cap proposal and asked whose responsibility it would be to order that efforts be stopped. He said the cap proposal must be considered very carefully.
- 01:14:18 SEN. COBB said his motion is to approve Options 4, 5, 10, as written, and Option 13 with the FEMA reimbursement language requested by REP. RIPLEY. He said that SEN. WILLIAMS and SEN. LEWIS will work on and present their ideas at the April meeting. The **motion passed** on a unanimous voice vote.
- 01:16:06 REP. KEANE said that he traveled recently in New Zealand and that it was interesting to see how that country dealt with wildland fire. He suggested that it may be a good idea to investigate how other countries handle fire.
- 01:17:46 Ms. Smith discussed the committee priority listing for Department of Natural Resources and Conservation (DNRC) 2009 budget items, which included one-time-only (OTOs) items (EXHIBIT #3). Ms. Smith explained that available funding amounts to about \$700,000 and that the priority items total approximately \$4 million. She said the Subcommittee must decide the order of priority.
- 01:19:50 SEN. COBB that first two items have been taken care of and that he would write a letter of thanks to the administration for taking care of those items. Ms. Smith asked if these items would be put out for public comment or would be a matter of negotiating with the Governor's Budget Office. SEN. COBB said that the items would be approached through negotiations with the Budget Office. He said he would like to pursue item 4 - Fire Business Specialist position - and that he would like data from the DNRC to assist with the request. He asked Bob Harrington to comment.
- 01:22:09 **Bob Harrington, Forestry Division Administrator, DNRC**, said the more Incident Business Advisors (IBAs) that are available, the more spending decisions and trends can be monitored. He compared the current situation to plugging leaks in a dam, saying that staffing shortages make it impossible to pay as close attention as is needed. Mr. Harrington said that he could provide examples from last year to support the need for these positions. SEN. COBB said it would be helpful to be able to show what the benefit would be if the additional FTE were approved.
- REP. KEANE suggested that options, such as adjusting the number of FTEs requested, could be offered as part of the negotiations. He said he would like to pursue item 5 - Operations Section Supervisor. Ms. Smith said she needs directions from the Subcommittee on what it wishes to negotiate on now, and also for the 2009 biennium. SEN. COBB asked for input.

- 01:26:11 SEN. LAIBLE suggested sending a letter of support to the Budget Office for items 1 and 2 and to request that items 4 and 5 be reconsidered.
- 01:27:39 Mr. Harrington clarified that item 5 - Operations Section Supervisor - will be filled by using a recently vacated position. After Subcommittee discussion of the priority list, it was **moved** that a letter of thanks would be written to the Budget Office for expediting items 1 and 2 for upcoming fire season, and that a separate letter would be written, which would include information provided by Mr. Harrington, to request up to four IBAs. The **motion passed** on a 6-1 voice vote, with REP. RIPLEY voting no.
- 01:30:17 SEN. COBB said will he postpone discussion about what will be done for next session until the April meeting and that REP. RIPLEY and SEN. WILLIAMS, because they are returning legislators, will work together on this. Ms. Smith said that items 1 and 2 will have to be addressed in the 2009 session if the Subcommittee wishes to change them from modified positions to FTEs. SEN. COBB said because these issues are so tied to others, it may be difficult to make a clear plan, but encouraged REP. RIPLEY and SEN. WILLIAMS to work together as best they can, considering the uncertainty involved. Ms. Smith said that a decision on how these items will be funded must also be made because of the fees issue, and she said that this issue extends beyond HB 2.
- Ms Smith discussed fire protection fees and referred to a map that illustrates assessed fee areas. She explained how the fee is divided out; and noted that there are areas of discrepancy. Ms. Smith said clearer statutory guidelines are needed for assessing fees. SEN. COBB asked REP. RIPLEY and SEN. WILLIAMS to include this issue in their work.
- 01:34:41 REP. KEANE asked if the insurance tax was completely off the table. SEN. COBB said that for now it is. REP. KEANE asked if REP. RIPLEY and SEN. WILLIAMS could include it in their work.
- 01:36:04 SEN. COBB said that the full FSIC would discuss how fire departments and insurance companies can work to educate the public and policy holders on what they can do to prepare for the upcoming fire season. He said that local governments would also be contacted to see if they are communicating with state and federal agencies regarding their concerns. He said that he would like responses back from all of those groups, so that the Committee can use the responses to guide its work.
- 01:37:32 REP. RIPLEY asked if letters should also be sent to the DNRC and USFS to find out what they are doing to prepare for the next season; and said that if private land owners are requested to provide this information, that the federal and state agencies should have to as well. SEN. COBB said that it was his intention to do so and that draft letters would be available at the next day's meeting.

PUBLIC COMMENT

- 01:38:44 Mr. Harrington made the following comments:

- It is DNRC policy to have a fire review for every major fire it is involved in and to invite the major players, which includes local government officials and landowners. He said he also would like to see what went wrong, particularly with the Ahorn Fire.
- The role of the NRCG should be reinforced as the body to rely on to help ferret out the issues of concern for local, state, and federal agencies.
- He is currently planning a meeting with the Deputy Regional Forester and fire staff with DNRC and the USFS, as well as representatives from the Washington office, to discuss the impact of long duration fires on state and local governments. He said he is hopeful that the meeting will occur in the next two months and that he it appears that it may be possible to arrange for reimbursements to state and local governments from outside the normal channels.
- Generally speaking, the fires will pay for any resource that they ordered. for example, if deputies were ordered to perform security as a part of managing the fire, that expense would be paid. There is a gap between what we are asking local governments to do and what the fire will routinely pay for. That changes if a FEMA declaration is made. If that happens a county can come in as a subgrantee under that and have its costs reimbursed at the 75% cost share rate. Because the Ahorn Fire was strictly a federal fire, there was no FEMA declaration, which is why the local government was impacted so heavily.
- The reason why DNRC reimbursed some of the Teton County firefighters is because of the county coop agreement DNRC has with Teton County.
- April 10 and 11 is an interagency line officer meeting for the purpose of discussing three primary topics: 1. cost share process, 2. structure protection, and 3. long duration fire management.
- Regarding full suppression versus fire use fires, Mr. Harrington said he wants to reinforce the fact that the USFS did try to put the Ahorn Fire out and backed off only when it became clear suppression efforts were not going to be successful. He said that habitat issues can be a consideration in these types of decisions, but that human safety and saving money are usually the main reasons for changing fire strategy. It should be said that if SEN. LEWIS's idea gets traction, the Committee may well push the State of Montana into a similar strategy, that in some cases, may not be a bad thing.
- The Little Wolf Creek Fire was a DNRC fire, so hopefully Lewis and Clark County will be reimbursed soon.

01:45:38 SEN. COBB asked what the status is of the meeting with the federal government. Mr. Harrington said the meeting has not been finalized but that the April 10 and 11 meeting will be with about 100 line officers. Ms. Smith said that Ted Mead, DNRC, has arranged for Ms. Heisel and herself to attend the line officers meeting.

SEN. COBB said how the Committee approaches the funding issue will depend a lot on what happens at the federal level and how the AMR comments are addressed. DNRC is key and need to keep the Committee informed on how it is progressing with its AMR concerns.

- 01:47:17 **Mary Sexton, Director, DNRC**, asked to discuss the budgeting process and said that she plans to request two additional items to be brought to the Budget Office for the next fiscal year. Director Sexton said her interest is for the next legislative session, and since many of the items were taken from the DNRC list, she would like to know what the Committee's plans are because budget requests have to be finalized by May 1. She said that DNRC staff has prepared what it thought will be put into the agency's EPP proposal, but said she didn't know what Committee had in mind for the next biennium. Director Sexton asked if she should work with SEN. WILLIAMS and REP. RIPLEY on this. SEN. COBB said yes. Director Sexton asked if the draft was the DNRC draft or the Committee draft. Ms. Smith said the list on the wall is one that she created, based on what the Committee requested in their conference call. She said they can go back to the original list, if they want to.
- 01:52:21 Mr. Meyer said that he did not mean to suggest that the USFS will do nothing to reduce fuels on federal lands or to fight fires in back country areas. He said that the USFS does a lot to manage back county lands and that fires in those areas will be managed on a strategic basis. He said that fires that adjoin private lands will be fought aggressively, particularly when the USFS can work with the landowner. SEN. COBB said again, the question is how much money will be needed for these activities. He said that the state has to decide how it will fund fires, but will have a difficult time doing so until it knows what the federal government does. He said the federal budget for fuels reduction has been cut, which will affect how much can be done. Mr. Meyer said the USFS would respond to the committee's questions as best it can.
- 01:54:56 Ms. Smith reminded the Subcommittee that it should determine how these issues will be raised up to the congressional level. SEN. WILLIAMS suggested that, after listening to the USFS testimony, the Subcommittee needs to invite Montana's congressional delegation to participate in the field hearings. She said that congressional staffers should be listening to what Montanans are saying, so that they can follow up at the federal level. She asked that the USFS be invited to all ensuing meetings as well. She asked that SEN. COBB write letters of invitation to the congressional delegates and to the USFS. SEN. COBB said that the full Committee will have an opportunity to review the letters before they are mailed.

ADJOURNMENT

- 01:57:02 With no further business before the Subcommittee, SEN. COBB adjourned the meeting at 2:57 p.m. CI0429 8143dfxa.