



## Fire Suppression Interim Committee

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### 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

March 27, 2008

Room 102, State Capitol  
Helena, Montana

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### COMMITTEE MEMBERS PRESENT

REP. BILL WILSON, Chair  
SEN. RICK LAIBLE  
SEN. DAVE LEWIS  
SEN. CAROL WILLIAMS  
REP. STEVE BOLSTAD  
REP. RICK RIPLEY

### STAFF PRESENT

LEANNE HEISEL, Lead Staff  
TODD EVERTS, Staff Attorney  
DAWN FIELD, Secretary

### AGENDA & VISITORS' LIST

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

## **COMMITTEE ACTION**

The Wildland Urban Interface Subcommittee of the Fire Suppression Interim Committee (FSIC) approved the following options for presentation to the full FSIC as options on which the FSIC will request public comment:

- Option 1 - no new legislation;
- Option 2 - MACo proposal to authorize a local government to regulate and enforce fire mitigation measures;
- Option 5 - to create insurance incentives;
- Option 12 - grant funding for local prevention and mitigation programs;
- Option 14 - require Firewise certification for new subdivisions;
- Option 15 - to create tax incentives for forest property owners;
- Option 18 - state adoption of and enforcement of International Wildland-Urban Interface Code (IWUIC); and
- Option 20 - require conservation easements to have fuels management plan.

## **CALL TO ORDER AND ROLL CALL**

00:00:01 REP. WILSON called the meeting to order at 3:09 p.m., the secretary took roll (ATTACHMENT #3).

## **STAFF PRESENTATION OF OPTIONS**

00:00:19 **Leanne Heisel, Research Analyst, Legislative Services Division (LSD)**, referred the Subcommittee members to the Subcommittee Response Tally table (EXHIBIT #1) and said the members would take public comment, discuss, and vote on each of the options. The options selected will be presented to the full FSIC at the next day's meeting and all options approved by the full FSIC will be presented for public comment at the hearings scheduled around the state. Ms. Heisel suggested that at this point in the process, it would be more effective for the Subcommittee focus on concept, ideas, or policies, to offer to the public, rather than specific bill drafts. REP WILSON said that if there is an option that a member wishes to have drafted as a bill, Ms. Heisel would work with that member.

## **OPTION 1 - No new legislation**

### **Public Comment**

00:04:29 **Mary Sexton, Director, Department of Natural Resources and Conservation (DNRC)**, said the DNRC is working on SB 51, regarding best practices for development in the wildland urban interface (WUI). She said best practices are a good place to start but that if that is the end of the process, implementation will be spotty and inconsistent.

00:05:40 **Linda Stoll, Missoula County**, said the one of the problems with SB 51 is that it has no enforcement mechanism. The Department of Labor and Industry (DOLI) was to develop building standards for WUI areas, but there is no mechanism for local governments to enforce those standards. At the very least, an enforcement mechanism is needed.

00:06:35 **Glenn Oppel, Montana Association of Realtors**, said his association supported SB 51, and said the element of local control is an important aspect of

the bill. He said it requires counties to consider the issue of wildland fire when updating growth policies. He said SB 51 is the proper tool to address the issue.

00:07:25 **Pat McKelvey, FireSafe Montana**, said to do no new legislation would be a disappointment to those whose work is fighting fire. He said there is an expectation that something will be done.

00:08:05 **Harold Blattie, Montana Association of Counties (MACo)**, pointed out that SB 51 requires only that counties consider the impact of the wildland urban interface, there is no requirement to do anything. Secondly, SB 51 only applies to new subdivisions and has no effect on the thousands of already developed parcels and subdivisions. Even if new language is adopted, the issue of enforcement is still a problem. The no new legislation approach will not affect existing parcels and subdivisions.

### **Subcommittee Questions**

00:09:37 There were no Subcommittee questions. SEN. LAIBLE **moved** to recommend Option 1 - no new legislation - to the FSIC. The **motion passed** on a unanimous voice vote.

### **OPTION 2 - MACO proposal to authorize local government to regulate and enforce fire mitigation measures**

00:10:20 Ms. Heisel said this option would be discretionary and counties could choose to implement it or not. She said there would not be a protest provision but there would be an appeals process. New legislation would be needed to implement this proposal and there are many details to work out.

### **Public Comment**

00:11:48 Mr. Blattie said MACo offered this proposal because of its simplicity, it is stand-alone and is not dependent on anything else. He said the term "fire plain" was coined in order to illustrate the concept's similarity to that of a flood plain. This can be done outside of zoning and would eliminate the difficulties often associated with zoning. He said MACo is committed to this concept and encouraged the Subcommittee to offer it to the public for comment.

00:13:30 Director Sexton said she worked with MACo on this proposal and feels it is a positive step because it takes the issue out of the subdivision and platting statutes. She said the only problem she sees is that it is discretionary, and suggested that incentives be provided to encourage counties to implement the proposal. Consistency, particularly in WUI areas, is needed, if it is to be an effective solution.

00:14:55 Mr. Oppel, MAR, said several questions come into play on this issue. He said that subdivision and zoning tools are the proper tools to deal with land use regulations. Also, the lack of a protest provision will affect landowners' rights and said adequate protection must be provided. At some point, long-range planning and zoning must be considered.

### **Subcommittee Questions**

- 00:16:10 REP. RIPLEY referred to the "considerations" column of EXHIBIT #1, and asked Mr. Blattie to discuss why this proposal is necessary, if counties already have the tools they need. Mr. Blattie said he disagreed with that statement and said circumstances around the state illustrate the fact that the problem must be addressed outside subdivision regulations, because subdivision regulations are only forward looking.
- 00:18:01 REP. BOLSTAD asked how implementation of this option would affect fire behavior. Director Sexton said that it is difficult, in the course of fighting a fire, to be aware of county lines and which jurisdiction's rules and regulations are in effect. This option would help address the inconsistency of regulations between counties.
- 00:19:21 SEN. LAIBLE asked if the MACo proposal would be voluntary. Mr. Blattie said yes, but if it was to become required, funding would be necessary to implement it. SEN. LAIBLE said the problem is not with zoning, but with the intent of zoning. He said that the issue probably could be addressed under SB 51 and that there is no need for new legislation. Mr. Blattie said SB 51 does not address the issue of existing lots, and that the only tool to do that is zoning. Providing funding would be very helpful if WUI mapping was to be required, but would not take care of the heart of the problem. He asked, for instance, how a developer would be required to ensure defensible space, because when a plat is signed by county commissioners, there are no enforcement provisions. Mr. Blattie said that county attorneys are already overworked, so it would be unlikely that action would ever be taken, unless an egregious circumstance occurs. SEN. LAIBLE said he thought the intent of SB 51 was to provide tools to DOLI to establish criteria for housing development in WUI. Mr. Blattie said this proposal would direct DOLI and DNRC to develop administrative rules with a common sense approach.
- 00:29:42 SEN. LAIBLE asked Mr. Oppel if there is any common ground to work with SB 51 to create tools and incentives for local communities to implement fire safety measures. Mr. Oppel said SB 51 could be revisited, and said the intent of SB 51 was to give counties the tools to tackle this issue. He read from SB 51 (76-1-601, MCA) and said when counties update their growth policies, fire issues and WUI will have to be taken into consideration. A key concern of MAR with the MACo proposal is that it appears to be a state mandate and would not be discretionary, because if patterned after flood plain regulations, DNRC would become the enforcement entity. Also, the larger question of how to protect the due process rights of landowners is another concern. He said he believes landowners would be willing to work with counties if very specific WUI regulations were put forth.
- 00:34:23 REP. BOLSTAD **moved** to recommend Option 2 - MACo proposal - to the full FSIC. SEN. LAIBLE said he was uncomfortable with the proposal and asked to hold off on approval for the time being to see if other tools are offered in other options that would address this issue. He said the MACo proposal is not just for new growth, but for all existing space within a zoned, WUI area. The **motion passed** on a unanimous voice vote.

**OPTION 3 - requiring local governments to designate wildland urban interface and enforce vegetation management and building material mitigation measures**

00:36:10 Ms. Heisel said this option would create mandatory guidelines and could contain a funding element.

**Committee Discussion**

00:39:04 SEN. LEWIS said Option 3 would be an unfunded mandate and that he would not support it. Ms. Heisel suggested amending the language to include funding for the designation of WUI areas.

00:39:50 REP. BOLSTAD asked if Option 3 could be incorporated into Option 2. SEN. LAIBLE said that he would like keep Option 3 separate.

**Public Comment**

00:40:32 Director Sexton said that dealing with WUI is a substantial health and human safety issue and that it rises above other issues in planning and growth management statutes. She said she is aware that many people are opposed to this type of proposal and suggested that incentives may lessen the opposition.

**Subcommittee Questions**

There were no Subcommittee questions.

00:42:55 Ms. Heisel said she would amend Option 3 to include a funding mechanism. REP. BOLSTAD **moved** to recommend Option 3 -- MACo proposal with modification - to the full FSIC.

00:44:24 REP. RIPLEY said he thought that funding could be incorporated into Option 2 and said it would be a better option than Option 3. SEN. LAIBLE agreed, saying that Option 2 gives local governments flexibility and tools to deal with the issue. REP. WILSON said that sending the Option 3 to the full Committee is not binding and would simply allow the full Committee to consider the proposal. The **motion failed** on a 2-4 roll call vote, with SEN. LAIBLE, SEN. LEWIS, REP. RIPLEY, and REP. WILSON voting no (ATTACHMENT #4). Ms. Heisel said she would add a funding incentive to Option 2.

**OPTION 4 - amend zoning protest provisions**

00:47:20 Ms. Heisel said the Subcommittee did not support this option, as presented at the February 15, 2008, meeting. She briefly explained Option 4, as outlined in EXHIBIT #1.

**Public Comment**

00:48:30 Ms. Stoll said Missoula County has supported this for long time and that she was disappointed to see it removed from the list of options.

**Subcommittee Questions**

There were no Subcommittee questions.

00:50:01 REP. WILSON **moved** to recommend Option 4 -- amend zoning protest provisions - to the full FSIC. The **motion failed** on a unanimous voice vote.

#### **OPTION 5 - insurance incentives**

00:50:54 Ms. Heisel explained that Option 5 would require insurers to provide incentives for vegetation management and/or building standards and require regular inspections.

#### **Public Comment**

00:51:25 **Greg Van Horssen, State Farm Insurance**, submitted and discussed a letter outlining State Farm's position regarding insurance incentives (EXHIBIT #2). He said State Farm has concerns about who will set the standards, who will do the inspections, and who will pay for the inspections. Incentives usually mean reduced premiums, which would likely be legislatively mandated. The insurance industry is already a very regulated and competitive business, and companies work to keep premiums as low as possible and still provide coverage. State Farm provides educational materials and technical support to potential and current customers on defensible space and risk reduction. Mr. Van Horssen asked that the Subcommittee not recommend Option 5 to the full FSIC and allow the market handle the issue.

00:57:32 **Jacqueline Lenmark, American Insurance Association (AIA)**, said she supports Mr. Van Horssen's comments in general, but said that her view differs slightly because she speaks for many companies. She said that the industry is not a monolith and to try to craft legislation that will treat all companies and risks in the same manner will not produce the desired result. She strongly encouraged the Subcommittee to reject Option 5.

00:59:46 Director Sexton commented that, had Seeley Lake burned last summer as she feared it would, a very different discussion would be taking place.

#### **Subcommittee Questions**

01:00:32 SEN. LAIBLE said that automobile insurance rates are based on a driver's safety record and asked why this type of insurance should be different. He said that homeowners who make the effort to mitigate fire risk should be rewarded and that homeowners who choose not to should have to pay more for insurance. Mr. Van Horssen said that insurance companies should be allowed to decide how to rate risk and that many factors are taken into consideration when setting rates.

SEN. LAIBLE said the Subcommittee's perspective is that it would like the insurance industry as a whole to come forward and be proactive, so that legislative standards don't have to be set. Mr. Van Horssen said that State Farm has already taken a proactive role, as have other companies. He reiterated that letters are sent out on a regular basis to higher risk policy owners, reminding them of what to do to prepare for fire seasons. Educational materials are available at offices and technical support is also available. SEN. LAIBLE asked if State Farm requires policy owners to sign off that they have read the materials. Mr. Van Horssen said no, that State Farm does not require acknowledgment.

01:07:03 SEN. WILLIAMS said that while she appreciated Mr. Van Horssen's comments, Director Sexton made a strong point in her comment. She said the insurance representatives indicated at the February meeting that costs should be paid for by the general fund, but her opinion is that the insurance industry needs to be more involved and should share the burden. She asked Mr. Van Horssen and other industry representatives to work with the Subcommittee that evening to come up with potential options to present to the full Committee the next day. Mr. Van Horssen said State Farm always steps up to its contractual obligations in catastrophic events. He said he wanted to make very clear that State Farm will do everything it can to protect its business position, but that he would use any resources at his disposal to answer questions on home insurance issues. SEN. WILLIAMS asked Mr. Horssen if State Farm feels part of the responsibility for fighting structure fires for homeowners in Montana. She said that if the taxpayers' money is going into fighting structure fires, they are saving the insurance industry's businesses from having to pay. She asked Mr. Van Horssen if he would agree that there is some shared responsibility, on the part of insurance companies, for fighting structure fires. Mr. Van Horssen said that there are many businesses that benefit from fire suppression. He said that State Farm responsibility to its policy holders is to fulfill its obligations in the event of loss, and it does that.

01:11:18 SEN. LEWIS said he plans to support the option. He said the current system is not a good one because there are no incentives for homeowners to take preventive action. He said the insurance companies are players and should count on being participants in the future.

01:13:03 SEN. LAIBLE **moved** to approve Option 5 - insurance incentives - to the full FSIC. The **motion passed** on a unanimous voice vote.

#### **OPTION 6 - statutory vegetation management requirements**

01:13:29 Ms. Heisel briefly described Option 6 , as outlined in EXHIBIT #1.

#### **Public Comment**

01:14:08 There was no public comment.

#### **Subcommittee Questions**

01:14:18 There were no questions and a motion was not made to recommend to Option 6 the full FSIC. Option 6 was dropped from further consideration.

#### **OPTION 7 - statutory building requirements**

01:14:29 Ms. Heisel briefly described Option 7 , as outlined in EXHIBIT #1.

#### **Public Comment**

01:15:02 There was no public comment.

#### **Subcommittee Questions**

01:15:08 There were no questions, and a motion was not made to recommend Option 7 to the full FSIC. Option 7 was dropped from further consideration.

**OPTION 8 - require counties to identify and prohibit development in high fire hazard areas**

01:15:14 Ms. Heisel briefly described Option 8 , as outlined in EXHIBIT #1.

**Public Comment**

01:15:35 Ms. Stoll said that the wording in Option 8 was not exactly what Missoula County had requested and asked that be changed to reflect the original intent of "allowing" local governments the ability to prohibit development in high risk fire areas. She compared Option 8 to existing flood hazard statutes and said that similar language could be used for addressing high risk fire areas. She said there are places that ought not be developed and that every time such an area is developed, the potential for fire risk is increased. Ms. Stoll asked that Option 8 be rephrased to reflect the original intent of Missoula County's comment and that it be moved forward.

01:17:13 Mr. Blattie said that it was unlikely that MACo membership would support Option 8 as currently worded, but that it may support the proposal if it was optional.

**Subcommittee Questions**

01:17:44 SEN. WILLIAMS asked if Option 8 could be reworded to include the word "allow", rather than require. SEN. WILLIAMS **moved** to recommend Option 8, with the language change requested by Missoula County, to the full FSIC. REP. RIPLEY commented that it could be difficult to define high risk fire areas.

01:19:06 Mr. Blattie said that fundamentally, MACo would be supportive of legislation allowing counties to do this but does have concerns that would have to be addressed.

01:19:47 SEN. LAIBLE said, from the perspective of his county, that he could not support Option 8 because of the potential for an entire county being prevented from developing anything, due to high risk of fire.

01:20:30 The **motion failed** on a 3-3 tie voice vote, with SEN. LEWIS, SEN. LAIBLE, and REP. RIPLEY voting no.

**OPTION 9 - require a county to meet certain requirements in order to receive fire suppression funding**

01:21:02 Ms. Heisel briefly discussed Option 9, as outlined in EXHIBIT #1 and said past attempts to adopt similar requirements have not been successful.

**Public Comment**

01:22:17 There was no public comment.

**Subcommittee Questions**

01:22:26 There were no Subcommittee questions. No motion was made, Option 9 was dropped from further consideration.

**OPTION 10 - state classification criteria for forestland-urban interface areas**



01:22:35 Ms. Heisel briefly discussed Option 10, as outlined in EXHIBIT #1.

**Public Comment**

01:22:53 There was no public comment.

**Subcommittee Questions**

01:23:00 There were no Subcommittee questions. No motion was made, Option 10 was dropped from further consideration.

**OPTION 11 - bill property owner for suppression costs in certain criteria are not met**

01:23:07 Ms. Heisel briefly discussed Option 11, as outlined in EXHIBIT #1.

**Public Comment**

01:23:51 There was no public comment.

**Subcommittee Questions**

01:23:58 There were no Subcommittee questions. No motion was made, Option 11 was dropped from further consideration.

**OPTION 12 - funding for local prevention and mitigation programs with general fund funding**

01:24:05 Ms. Heisel briefly discussed Option 12, as outlined in EXHIBIT #1

**Public Comment**

01:24:39 Director Sexton said there are a number of these programs already in existence, mostly through federal funding administered through DNRC, although federal funding has been decreasing and is expected to continue to do so.

01:25:47 Mr. Blattie said Option 12 would be a great help to counties.

01:26:17 Mr. McKelvey said there is strong support for Option 12 and that the FireSafe Montana program started with grants such as those that Option 12 would provide. He said the momentum for his program and others is growing and that this would keep it growing. He suggested that, if DNRC is able to get additional FTE, they could assist local governments with mitigation efforts.

**Subcommittee Questions**

01:27:23 SEN. LAIBLE asked, referring to the recent closure of the Bonner Mill, what can be done with the fibrous materials accumulated through mitigation efforts. Mr. McKelvey agreed that the product is difficult to market and expensive to transport, mainly because his program does not generate the volume of product that is of much interest to the mills. He said he doesn't have to make money by selling the product, but that it does help defray project costs; and while larger acreage projects generate saleable materials, markets are becoming more and more limited. He agreed that the mitigation effort must be tied into a way to market the smaller diameter product, such as through biomass fuel projects.

01:30:44 SEN. WILLIAMS **moved** to recommend Option 12 to the full FSIC. The **motion passed** on a unanimous voice vote.

**OPTION 13 - fire protection provision in subdivision regulations**

01:31:15 Ms. Heisel briefly discussed Option 13, as outlined in EXHIBIT #1.

**Public Comment**

01:32:19 Ms. Stoll said that she did not think that this language belonged in the subdivision regulations, because a local government, without permit authority, will have a very difficult time assuring that construction meets the regulations. Additionally, Ms. Stoll said, ensuring proper maintenance would be very difficult.

01:33:50 Mr. Oppel, on behalf of the MAR, agreed with Ms. Stoll. He said that the amendments to 76-3-504, MCA, as adopted in SB 51, already have provided for this and that Option 13 is not needed.

**Subcommittee Questions**

01:35:50 SEN. LAIBLE said the concern seems to be that the language is too broad and asked if it could be tightened up to focus on WUI home and structures only.

01:37:50 REP. WILSON **moved** to recommend Option 13 - fire protection in subdivision regulations - to the full FSIC. The **motion failed** on a 3-3 tie vote, with SEN. LAIBLE, SEN. LEWIS, and REP. RIPLEY voting no.

**OPTION 14 - require Firewise certification for new subdivisions**

01:38:49 Ms. Heisel briefly discussed Option 14, as outlined in EXHIBIT #1.

**Public Comment**

There was no public comment.

**Subcommittee Questions**

There were no Subcommittee questions. SEN. LAIBLE **moved** to recommend Option 14 - require Firewise certification for new subdivisions - to the full FSIC. The **motion passed** on a unanimous voice vote.

**OPTION 15 - tax incentives for forest property owners**

01:39:46 Ms. Heisel briefly discussed Option 15, as outlined in EXHIBIT #1.

**Public Comment**

01:41:15 There was no public comment.

**Subcommittee Questions**

01:41:20 SEN. WILLIAMS asked what the tax incentive would cost. Ms. Heisel said that the incentive would have to be set at a specific number before the cost could be determined.

01:42:45 SEN. LAIBLE **moved** to recommend Option 15 - tax incentives for forest property owners - to the full FSIC. The **motion passed** on a unanimous voice vote.

#### **OPTION 16 - tax incentive for Firewise communities**

01:43:02 Ms. Heisel briefly discussed Option 16, as outlined in EXHIBIT #1.

#### **Public Comment**

01:43:31 Mr. McKelvey said it would be difficult to define "community" and that it could be an area as small as a city block. He said that Firewise designation is not easily applied in large areas like Montana and, while he would like to see an incentive, he was not convinced this would be the best approach.

01:44:47 Mr. Blattie said that there may be property tax implications and that the Department of Revenue may have concerns about Option 16, as well as counties.

#### **Subcommittee Questions**

01:45:46 REP. BOLSTAD asked if Option 16 would apply to individual homeowners or to homeowners who live in a designated Firewise community. Ms. Heisel said it would apply to designated Firewise communities, but said that additional work is needed to clearly define boundaries. Mr. McKelvey explained the requirements for a Firewise community and said that not every home within a Firewise community has to meet the requirements, but that the majority of the homes in the community needs to have met the requirements. He said he agreed with Mr. Blattie's comments about the potential taxation issues and said a more effective approach may be to offer incentives to individual homeowners through cost share programs and other avenues.

01:48:27 REP. WILSON **moved** to recommend Option 16 - tax incentive for Firewise communities - to the full FSIC. The **motion failed** 1-5, on a voice vote, with REP. WILSON being the "aye" vote.

#### **OPTION 17 - require fire district membership**

01:49:06 Ms. Heisel briefly discussed Option 17, as outlined in EXHIBIT #1.

#### **Public Comment**

01:49:30 Mr. Blattie said that HB 49 (2007 regular session) authorized a study of special purpose districts, and that work is ongoing on this issue. He said that one important piece of work to date has identified that there are two separate and distinct types of special purpose districts: one type provides a service, such as a fire district; and the other creates a funding source. He said that creating fire districts in sparsely populated areas of the state would be challenging, in spite of the service it may provide.

#### **Subcommittee Questions**

01:51:45 There were no Subcommittee questions. No motion was made, Option 17 was dropped from further consideration.

**OPTION 18 - state adoption of and enforcement of International Wildland-Urban Interface Code (IWUIC)**

01:51:57 Ms. Heisel briefly discussed Option 18, as outlined in EXHIBIT #1.

**Public Comment**

01:52:50 **Dave Cook, Program Manager, DOLI**, said he was available to answer questions.

01:53:17 Ms. Stoll said Missoula County strongly supports this option.

**Subcommittee Questions**

01:53:46 SEN. LEWIS asked if counties would be required to designate WUI areas. Ms. Heisel said that in order to work properly, there would have to be an area designation of where the code would be enforced. Mr. Blattie said under current law, counties can choose to adopt building codes, or not; and a county wide vote is necessary to do so. To date, four counties have adopted building codes. Currently, because the state has not adopted a statewide WUI or fire codes for for residential constructions, there is no code for counties to adopt, In concept, if the state was to adopt such codes, counties could then choose to also adopt them.

01:55:31 SEN. LEWIS said the requirement would be on DOLI to keep code current, but it would still be voluntary on the county's part. Mr. Blattie said he is not completely clear on the language and said that under all other building codes, the state adopts the building code standard and then a county can choose whether it wants to adopt and enforce building codes. This would follow the same process.

01:56:26 SEN. LAIBLE said that building codes have to be county wide, which could present problems for counties with WUI and nonWUI areas. Mr. Blattie agreed that could be a problem and said it would have to be dealt with.

01:57:55 Ms. Heisel clarified that the way Option 18 is written, there would have to be clear designation of WUI areas, and that places outside of those areas would no have to comply with WUI building codes.

01:58:47 SEN. LAIBLE said that SB 51 contained building standards, as opposed to building code. He asked if the language in Option 18 could be similarly worded. Ms. Heisel said that is what will be done with the SB 51 rulemaking.

02:00:03 Mr. Cook said difference is that, under SB 51, additional standards for fire mitigation are being provided to subdivision approval people. Option 18 appears to mandate additional code adoption, and inspection and enforcement requirements to DOLI.

02:00:55 Ms. Stoll clarified that four counties do have building code authority, but that county building codes can not be more strict than state code. Montana currently does not have building codes for high fire risk areas, which is why Missoula County is anxious about this.

- 02:02:04 REP. BOLSTAD asked if this would apply only in the four counties that have already adopted building code standards. Mr. Cook said no, that DOLI has jurisdiction only in areas that are not certified to enforce their own building codes..
- 02:02:51 REP. BOLSTAD **moved** to recommend Option 18 - state adoption and enforcement of the International Wildland-Urban Interface Code - to the full FSIC. The **motion passed** on a 4-2 voice vote, with SEN. LEWIS and SEN. LAIBLE voting no.

**OPTION 19 - required county designation of wildland urban interface, Department of Labor and Industry inspection authority, and requiring insurance companies to inspect for compliance**

02:03:29 Ms. Heisel briefly discussed Option 19, as outlined in EXHIBIT #1.

**Public Comment**

- 02:04:36 Director Sexton said Option 19 would add the ability for DOLI to inspect and that existing inspectors could be utilized to implement this code, which is specifically tailored for WUI. She said that the second piece, to require insurance companies to do compliance checks, would be objectionable to insurance companies, and that other avenues, such as local fire departments, may be a possibility. The compliance checks would cover the structures, defensible space around the structure, water source and protections, and ingress and egress.
- 02:08:04 Mr. Blattie said that Director Sexton and Senator Cooney met with him on this issue, and that it has been conceptually endorsed by the MACo Land Use Committee. He said the "devil is in the details" and that one area of contention is how to designate WUI boundaries. He said that counties should be allowed to decide how to map WUI areas and that grant funding to assist would be of help. He said that it makes sense to have DOLI inspectors and that either funding could be allocated, or a fee could be charged to do the inspections. Regarding compliance checks, Mr. Blattie said that he is confident that insurance companies will oppose this, but has been told by several counties that county fire chiefs have expressed interest in doing the checks. He said he would be hesitant to impose this on counties because it would be a lot to ask of volunteer fire departments.
- 02:12:35 **Jerry Meyer, United States Forest Service (USFS)**, said the USFS does not take an official position on pending legislation, but said on behalf of the DNRC, he wanted to reiterate the challenges of fighting fire in WUI areas. Resources are frequently diverted from fire suppression to structure protection, resulting in the loss of opportunity to suppress the fire in a timely and efficient manner. He said that this affects not only the cost of fighting the fire, but adds safety concerns as well. Additionally, Mr. Meyer encouraged the Subcommittee to place more focus on survivable space, rather than defensible space.
- 02:14:03 Mr. Van Horssen agreed that insurance companies would object to being responsible for compliance checks. He said that it would be asking agents to be experts on building codes, which would place a hardship on smaller companies

and possibly force them out of the market place. He said that would likely result in higher premiums and asked that this component of Option 19 be redacted.

02:17:19 Ms. Lenmark emphasized that it is not the intention of insurance companies to not be a part of the solution. Insurance companies recognize the enormity of the problem and want to participate, but do have certain concerns. She reminded the Subcommittee that the industry is a large contributor to the general fund through premium taxes and fire policy taxes. She agreed with Mr. Van Horsen that the requiring insurance companies to be responsible for compliance would be opposed by insurance companies, but also stated that it would very likely be unconstitutional as well.

02:22:40 Mr. McKelvey agreed that the insurance component should be taken out.

### **Subcommittee Questions**

02:24:09 There were no Subcommittee questions. SEN. LAIBLE **moved** to change the language to redact the component regarding insurance companies being required to conduct compliance checks. REP. RIPLEY asked who would provide compliance checks. REP. BOLSTAD said he thought that should be discussed further, but at the very least, DOLI could do the initial inspection of new construction. SEN. LAIBLE said another issue is that local fire fighters already to a good job of checking ingress and egress, and suggested that local fire departments, with consideration of the fiscal impact, could take care of that.

02:26:08 REP. RIPLEY asked if SEN. LAIBLE planned to include that as part of the motion. After a brief discussion, it was decided that the insurance industry would be removed completely, but that additional public comment and committee discussion could be taken before deciding who would be responsible for compliance checks. The **motion passed** on a unanimous voice vote.

02:27:52 REP. BOLSTAD **moved** to recommend Option 19 - as amended - to the full FSIC. The **motion failed** on a 3-3 tie vote, with SEN. LAIBLE, SEN. LEWIS, and REP. RIPLEY voting no.

### **OPTION 20 - requiring conservation easements to have fire management plan**

02:28:45 Ms. Heisel briefly discussed Option 15, as outlined in EXHIBIT #1.

### **Public Comment**

02:29:49 **Glenn Marx, Land Reliance**, said his concerns were covered in EXHIBIT #1.

02:30:04 Mr. McKelvey suggested that fuels management would be a more accurate term than fire management.

### **Subcommittee Questions**

02:30:41 SEN. LEWIS said Powell County has done a lot with conservation easements that there is a great deal of concern about this option. It is felt that the current process is working well and that there is no need for a requirement.

02:31:35 REP. RIPLEY **moved** to recommend Option 20 - requiring conservation easements to have fuels management plan - with the language change suggested by Mr. McKelvey, to the full FSIC. The **motion passed** 4-2 on a hand vote, with SEN. LEWIS and SEN. WILLIAMS voting no.

**OPTION 21**

02:32:41 Ms. Heisel said that Option 21 is for additional suggestions made by the public at during the hearings process.

02:32:56 REP. BOLSTAD asked if WUI statutorily defined. Ms. Heisel said yes, that there is a fairly broad definition in statute.

**Public Comment**

02:33:20 There was no final public comment.

**ADJOURNMENT**

02:33:32 With no further business before the WUI Subcommittee, REP. WILSON adjourned the meeting at 5:48 p.m.

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