

Advisory Committee to the Director of the Division of Fire Prevention and Control
on Wildland Fire and Prescribed Fire Matters (Advisory Committee)

Recommendations to the Colorado Legislature's Interim
Committee on Wildfire Matters

August 25, 2014

Listed below are recommendations brought forward by members of the Division of Fire Prevention and Control's (DFPC) Stakeholder Advisory Committee. The Stakeholder Advisory Committee was formed in 2012 to provide the Division with input and advice on matters related to both wildland and prescribed fire. Members include representatives from across the fire community, including both governmental and non-governmental organizations.

These recommendations are presented in no particular order. The Committee recognizes that many of these items bring with them a significant fiscal impact. Unfortunately, the Committee did not have time to weigh the relative merits of these items nor establish any kind of prioritization.

- **Interoperable Communications and State Digital Trunked Radio System (DTRS)**

The Advisory Committee supports the SB14-127 requirement that the Colorado Department of Public Safety (CDPS) undertake a needs assessment and formulate a business plan regarding statewide radio communications by December 31, 2014. To the extent that the business plan recommends additional state investment in the maintenance and upgrade of DTRS, the Advisory Committee would encourage consideration of such investment.

Fiscal Impact: The fiscal impact will not be fully known until the needs assessment is complete. The Consolidated Communications System Authority has identified infrastructure upgrades and maintenance needs for the DTRS, but a more thorough needs assessment is necessary (along with identifying a viable funding stream for the ongoing operation and maintenance of the DTRS).

- **Incident Management Teams and Related Overhead Positions**

The Advisory Committee supports consideration of the Colorado State Fire Chiefs (CSFC) recommendation that the State invest in the development of three (3) Type III All Hazard Incident Management Teams (AHIMTs) in addition to the sustainment of the current 5 Type III AHIMTs. The Advisory Committee also suggests consideration of the CSFC recommendation that funding be provided for the delivery of statewide training of Strike Team Leaders and Staging Area Managers, two key positions identified as gaps in the Broken Arrow Mobilization Exercises.

Fiscal Impact: The CSFC estimates that \$2.5 million is needed over two years to address this need.

- **Fund Mitigation Grant Programs**

The Advisory Committee recognizes the importance of proactively addressing our wildfire risk and recommends that the Legislature continue to fund existing wildfire risk mitigation and watershed restoration grant programs. This includes reauthorization and funding of the Wildfire Risk Reduction Program administered by the Department of Natural Resources and continued funding of the Watershed Restoration Grant Program administered by the Colorado State Forest Service. The Advisory Committee further recommends that state mitigation and forest management grant programs allow for funding of prescribed burning (pile and broadcast burning) when such is determined to be the most appropriate hazardous fuel reduction or forest restoration strategy. The Legislature should encourage coordination of grant funds administered by state agencies (Colorado State Forest Service, Department of Natural Resources, Division of Homeland Security and Emergency Management) for mitigation to ensure that these funds are used in high-risk areas and in a way that will reduce the overall risk of wildfire.

- **Change Wildfire Mitigation Tax Deduction to Credit**

Current law allows taxpayers who have undertaken wildfire mitigation measures on their property to deduct up to half the cost of these measures, not to exceed a total deduction of \$2,500, from their state taxable income. The Advisory Committee recommends the Legislature repeal the current income tax deduction and provide an income tax credit of up to \$2,500 for wildfire mitigation measures.

- **Liability Protection for State Employees Conducting Prescribed Burning**

The Advisory Committee recommends the Legislature enact legislation providing immunity protection for state employees conducting prescribed fire activities. If the state employees are qualified and acting within the course of their employment they would not be liable for any civil damages unless their acts or omissions are willful and wanton.

Background: Following the Lower North Fork Escaped Prescribed Fire, the Legislature passed and the Governor signed HB12-1361 which waives governmental immunity for prescribed fire conducted by the state. The Division of Fire Prevention and Control (DFPC) has the authority to conduct prescribed fire under certain conditions.

There are adverse public safety and forest health implications if prescribed fire (both pile burning and broadcast burning) are not reintroduced on state lands. However, in the face of HB12-1361, it is not clear whether state employees have any protection from liability for this activity.

- **Division of Fire Prevention and Control Funding**

The Advisory Committee recommends the Legislature adequately fund the Division of Fire Prevention and Control. In order to determine the adequacy of funding, the Advisory Committee recommends the Wildfire Matters Review Committee request DFPC present a report concerning the status of allocated funding and FTEs for each of its areas of responsibilities to include gaps in staffing with respect to DFPCs wildland and prescribed fire responsibilities.

- **Colorado Firefighting Air Corps (C-FAC)**

The Advisory Committee recommends the Legislature make an appropriation to the Colorado Firefighting Air Corps (C-FAC) Fund to sustain the appropriate mix of firefighting aircraft, based on the recommendation of the DFPC Director.

Fiscal Impact: DFPC received an appropriation of \$19.75 million for FY2014/15 which included the on-time purchase of two aircraft. The CFAC report estimated that \$11.70 million would be needed annually to sustain the aviation program.

- **Volunteer Fire Department Organization Act**

The Advisory Committee recommends the Legislature enact legislation to create a statutory framework to enable and encourage the creation (and perpetuate the existence) of non-governmental volunteer fire departments in areas of the state that do not have organized fire protection and are outside the boundaries of fire protection districts. Such legislation would also address the status of VFD's that do not have geographic response areas but seek to contract for fire protection services.

Background: In some areas of the state, fire protection is provided by non-governmental volunteer fire departments (VFD's). These 40+ non-profit organizations do not have the authority to tax, but some receive funding from municipal or county governments to support their operation. While most of these VFD's have a geographical land area that they protect, there are a few that have been created for the sole purpose of providing contractual fire suppression services. While these latter organizations have historically operated under a cooperative agreement with the state, some argue that they are and should be treated as private contractors. Also, because there is no statutory framework for what a non-governmental volunteer fire department is, they are often ineligible for grants or other funding assistance.

The proposed legislation would define a "Volunteer fire department" as a nongovernmental unit organized as a nonprofit corporation with a primary purpose of firefighting, fire protection, or other emergency services to a defined service area and is recognized by the appropriate governmental entity or entities with jurisdiction for the area the unit services.

The proposed legislation would specify that in order to be recognized and be considered in good standing, the VFD shall be organized and in compliance with the "Colorado Revised Nonprofit Corporation Act", Section 7-121-101, et. seq. Also, the volunteer fire department must also have entered into an agreement to provide firefighting, fire protection, or other emergency services with the appropriate governmental entity or entities with jurisdiction for the area the VFD services.

- **Grant Authority to DFPC to Review NWCG Qualifications**

With respect to the Colorado Firefighter and Hazardous Materials Certification Programs, DFPC has the authority to review records to ensure that firefighters and hazardous materials responders seeking certification meet the minimum requirements for such certification. However, there is no corresponding authority for DFPC to review records of (non-federal) wildland firefighters to ensure they meet the requirements for National Wildland Coordinating Group (NWCG) qualifications. The Advisory Committee recommends the Legislature grant this authority to DFPC.

Other Recommendations

1. The Advisory Committee recommends that counties be granted the statutory authority to prohibit open burning, including agricultural burns during high fire danger days. There are some that believe counties already have this authority. Absent a formal Attorney General Opinion (AGO) that counties already have this authority, it is recommended that legislation be enacted specifically granting such.
2. The Advisory Committee recommends that CDPHE continue utilizing a flexible approach to air quality restrictions on prescribed burns.
3. The Advisory Committee recommends that the Wildfire Matters Review Committee continue to explore the recommendations of the Governor's Wildfire Insurance and Forest Health Task Force.