

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 12-0955 **Date:** April 30, 2012
Prime Sponsor(s): Rep. Gardner B.; Gerou **Bill Status:** House Judiciary
 Sen. Cadman **Fiscal Analyst:** Alex Schatz (303-866-4375)

TITLE: CONCERNING THE CREATION OF A STATE COMMISSION TO ADDRESS MATTERS ARISING OUT OF THE LOWER NORTH FORK WILDFIRE.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue		
State Expenditures General Fund *	At least \$25,832*	See State Expenditures section.
FTE Position Change	0.4 FTE	
Effective Date: Upon signature of the Governor, or upon becoming law without his signature.		
Appropriation Summary for FY 2012-2013: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

* *If this commission is prioritized as a Legislative Interim Committee for 2012, no separate appropriation is necessary as funds are currently appropriated in the Legislative Branch budget. Potential additional state expenditures in FY 2012-13 are discussed in the State Expenditures section and may be addressed in the annual budget process.*

Summary of Legislation

This bill creates the Lower North Fork Wildfire Commission (LNFWC). The LNFWC is composed of the chair of the Colorado Senate Judiciary Committee, the chair of the Colorado House Judiciary Committee, one minority-party member from the Judiciary Committee of each chamber, the state Treasurer, and the Executive Director of the Colorado Department of Public Safety (CDPS). The chairs of the judiciary committees may each appoint a designee to serve on the LNFWC in their place.

The LNFWC is charged with developing recommendations for the compensation of persons who suffered personal or property damage or loss of life as a result of the Lower North Fork Wildfire (the wildfire). The LNFWC will hold at least one public meeting and may conduct additional public meetings to collect information and deliberate on findings, policy recommendations and compensatory recommendations. The vote of four LNFWC members is required to take any action.

Table 1 describes the timeline for activities of the LNFWC.

Table 1. Timeline of Lower North Fork Wildfire Commission activities.	
Upon signature of the Governor	LNFWC effective date.
By July 1, 2012	First meeting of the LNFWC.
2012 Legislative Interim (May – December 2012)	LNFWC to investigate, report findings, and make recommendations relating to causes and impacts of the Lower North Fork wildfire.
2012 Legislative Interim	Public hearing to accept reports and take testimony on causes and impacts of the wildfire.
By September 30, 2012	Claims for LNFWC relief must be asserted by injured parties by filing written notice of claim.
December 31, 2012	Written report regarding causes and impacts of the wildfire submitted to the Judiciary and Local Government Committees.
2012 – 2013 As soon as practicable after each claim is filed	LNFWC evaluates each claim and may issue subpoenas, schedule evidentiary hearings, or rely on the written record, as appropriate for the fair and equitable resolution of each claim.
As soon as possible after the evaluation of claims	LNFWC produces a written report with a plan for payment of claims, submitted to the Joint Budget Committee (JBC). The JBC may draft an appropriation bill based on the plan for payment or decline to take action.
January 1, 2014	The chair of the Senate Judiciary Committee becomes LNFWC chair; the House Judiciary chair becomes the vice chair of the LNFWC.
July 1, 2014	LNFWC sunsets with the repeal of the bill.

The jurisdiction of the LNFWC is expressly limited to damage claims arising out of this specific wildfire, and the bill clarifies that other civil remedies (e.g., the courts) may be available to claimants who do not seek relief from the LNFWC. Claims made under the bill must be presented in a petition, in a form prescribed by the LNFWC. At the time a petition is filed, claimants are required to waive the right to file any other civil action addressing damages arising out of the wildfire. Additionally, with the acceptance of an award or settlement from the LNFWC, a claimant releases any related claims against state or local governments or the employees of these governments. Insurance proceeds and other sources of compensation for claimant losses will offset awards from the LNFWC.

All members of the LNFWC are entitled to reimbursement of actual and necessary expenses for attendance at meetings and other LNFWC duties. Legislative members of the LNFWC are further entitled to per diem compensation at the rate for attendance at meetings during the legislative interim.

Staff support for the LNFWC is provided by existing personnel from legislative staff agencies, the state treasurer's office, or the CDPS. The bill also authorizes LNFWC to hire one or more special masters (typically ex-judicial officers) to facilitate the investigation or review of wildfire-related claims.

Background

On March 22, 2012, state officials coordinated a prescribed burn on publicly-owned land in rural Jefferson County. Based on a report issued by the U.S. Forest Service, embers from that prescribed burn are believed to have ignited the Lower North Fork Wildfire in the same area on March 26, 2012.

At least 1,400 acres and improvements were directly affected by the wildfire. Damage from the wildfire is estimated to include three fatalities, and 23 residences destroyed or substantially damaged, with \$11.3 million in property damage.

State and local authorities have reviewed, or are currently in the process of reviewing, the causes of and response to the wildfire. The Jefferson County Sheriff's Office found no basis for criminal wrongdoing. The Governor suspended the use of prescribed fire by state agencies pending a review of associated protocols. The Governor also convened a review team on April 16, 2012, and, as a preliminary conclusion in ongoing review, recommended the creation of a streamlined wildfire management administration in the CDPS. Currently, Colorado State Forest Service wildfire resources reside under the Colorado State University administration, and the Division of Emergency Management resides in the Department of Local Affairs.

As of this writing, Colorado news sources report at least nine pending legal claims stemming from the Lower North Fork Wildfire. The Intermountain Rural Electric Association, for example, suffered severe damage to electric transmission facilities as a result of the wildfire and asserts \$1.2 million in damages.

Under current law, state and local government agencies in Colorado may defend negligence and other tort claims on the basis of limited immunity under the Colorado Governmental Immunity Act (CGIA). The CGIA caps damage recoveries at \$150,000 for the claim on any individual party and a total recovery of \$600,000 for any single occurrence. For claims against local governments, the CGIA authorizes the governing body to adopt a resolution allowing for recovery in excess of the statutory limits. The CGIA authorizes the General Assembly to pass a bill modifying the maximum recovery (to be paid from the General Fund) for any specific judgment or judgments that exceed the statutory maximum amounts.

State Expenditures

The work of the LNFWC will impact various departments and agencies of state government. In general, this bill impacts state expenditures in three categories:

- LNFWC duties during the 2012 legislative interim, to study causes and impacts of the wildfire;
- LNFWC’s, or its special masters’, duty to review claims and present a plan for payment; and
- state agencies that are required to submit testimony or produce reports related to wildfire causes, impacts, or individual damage claims.

At a minimum, the LNFWC requires expenditures during the 2012 interim of \$25,832 and 0.4 FTE, as described below. However, these costs may vary based on the number of claims received and procedural rules established by the LNFWC. Expenditures for claim review and state agency participation as witnesses or experts is subject to further evaluation and appropriation, as needed, in the annual budget process.

This fiscal note assumes that the first meeting of the LNFWC is held on July 1, 2012, and that all tasks assigned by the bill for the 2012 legislative interim fall in FY 2012-13. Expenditures for 2012 interim tasks are described in Table 2.

Table 2. Expenditures for 2012 Legislative Interim Tasks Under HB12-1352	
Cost Components	FY 2012-13
Personal Services	
<i>Senior Research Assistant (0.3 FTE) and Staff Attorney (0.1FTE)</i>	\$20,288
Member Reimbursement	
<i>Legislative Members (4 * 6 meetings * \$187)</i>	\$4,488
<i>Treasurer and Public Safety Exec. Dir. (2 * 6 meetings * \$88)</i>	\$1,056
TOTAL	\$25,832

Legislative Branch – 2012 Interim Tasks. During the 2012 legislative interim, the LNFWC must meet to organize, determine claim procedures (e.g., approve petition forms, potentially elect to hire a special master or begin reviewing claims), investigate the causes and impacts of the wildfire, hold at least one public hearing, and prepare a report for the General Assembly. This workload is anticipated to require at least six meetings, consistent with the typical allowance for an interim committee.

With four legislative members, at a per diem rate of \$99 per day, and all six LNFWC members eligible for expense reimbursement (at an average rate of \$88 per day), reimbursable LNFWC expenses will total at least \$5,544 during the 2012 interim. The fiscal note assumes Legislative Council staff will provide assistance for these 2012 interim meetings.

The legislature is budgeted each year with resources to support a limited number of interim committees of the General Assembly. Funding is available for five committees during the 2012 interim. If the committee established by this bill is designated by the Legislative Council to be one of the prioritized committees, no additional appropriation will be required.

If this interim committee is not designated by the Legislative Council to be one of the prioritized committees, or if the costs of this interim committee are not included in the budgeted amount, the Legislative Branch will incur additional costs as shown in Table 1 to support the interim committee. Required Legislative Branch appropriations may increase over the estimated amount if the LNFWC holds additional meetings, hires consultants, or begins the claims evaluation process concurrently with the 2012 interim.

Executive Branch – State Treasurer’s Office and Colorado Department of Public Safety. The state treasurer and the executive director of CDPS will be required to attend at least six meetings of the LNFWC during the 2012 interim. The bill also identifies staff resources in the treasurer’s office and CDPS as potential staff to the LNFWC. The fiscal note assumes that contributions by employees of these departments are supplemental to the assistance provided by the Legislative Council Staff in coordinating and running meetings. Treasurer and CDPS tasks related to the 2012 legislative interim will be accomplished with existing resources.

In the event that continuing work of the LNFWC (e.g., additional forensic study of the wildfire, review of claims, development of a plan for payment) requires significant additional workload involving either the Treasurer’s Office or CDPS, additional expenditures may be requested through the annual budget process. For example, a comprehensive technical document assessing the Lower North Fork Wildfire may involve substantial investment by state agencies, considering costs of approximately \$425,000 to provide an assessment of the 2010 Fourmile Canyon Fire and \$900,000 for a detailed report on the 2002 Hayman Fire.

Executive Branch – Other departments and agencies. Certain state government agencies (e.g., the Colorado State Forest Service) are likely to be summoned by the LNFWC to participate and provide records, reports, and other documents for review, particularly in its investigation during the 2012 legislative interim of the causes and impacts of the wildfire. State agency workload associated with responding to LNFWC investigation will be absorbed in existing resources.

Legislative Branch – Review of claims – Conditional expenditure. If the LNFWC elects to employ one or more special masters, the cost for personnel with the requisite level of experience is at least \$300 per hour. In the event that 24 claims are received by the LNFWC (an estimate based on current reports of residential and institutional losses; see the Background section), and if evaluation of all claims is delegated to a special master, assuming that each claim requires at least one eight-hour day to assemble the record (potentially involving a hearing), evaluate, and formulate a recommendation, the use of special masters would cost at least \$57,600. This expenditure is conditional upon LNFWC determination to include a special master in its procedures and may increase if there are additional claims, more time expended per claim, or additional experts used in the process.

Legislative Branch – Plan for payment of claims – General Fund expenditure. As directed by the bill, any plan for payment of claims filed with the LNFWC will require an appropriation bill approved by the Joint Budget Committee. Under current law, judgments and settlements paid by the state in tort actions require an appropriation from the General Fund. This bill does not create a new source of revenue to pay such claims and it is therefore anticipated that any legal liabilities incurred by the LNFWC will require a General Fund appropriation. At this time, it is unknown how many parties will, in fact, elect to file a claim with the LNFWC, to what extent potential monetary damages will be offset by insurance proceeds, and the outcome of LNFWC review in terms of a plan for payment of claims. Based on reported amounts, total economic losses from the wildfire, as the basis for potential claims filed with the LNFWC, exceed \$11.3 million.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 3.

Table 3. Expenditures Not Included Under HB12-1352*	
Cost Components	FY 2012-13
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$2,452
Supplemental Employee Retirement Payments	1,082
TOTAL	\$3,534

**More information is available at: <http://colorado.gov/fiscalnotes>*

Local Government Impact

Specific local governments and local government personnel may be compelled to provide testimony or reports to the LNFWC in its investigation and review of claims. To the extent that these local agencies have extensive documentation related to the extent of actual damage and insured losses, the LNFWC may impose significant workload; however, this workload is assumed to be equivalent to local agency responsibility to provide testimony and evidence in civil actions were the same cases to be filed in court.

The LNFWC is an alternate and exclusive remedy in cases that would otherwise likely involve local government as a named defendant among potentially responsible parties in wildfire-related damage claims. Costs associated with legal defense — either direct litigation costs or risk management costs — may be reduced for local governments that own property involved in the wildfire and local governments with a roles in response to the wildfire.

Departmental Differences

The Governor's Office and Department of Public Safety (collectively referenced as CDPS in this Departmental Differences section) jointly responded to the fiscal note analysis of House Bill 12-1352. In its response, the CDPS estimates that costs to produce a Lower North Fork Fire Report by December 31, 2012, will be \$425,000. The CDPS estimate of costs to evaluate and make recommendations on individual claims totals \$201,664 in personal services expenditures and \$10,926 in operating expenses. The CDPS response acknowledges that "the bill specifies that staff costs of the Commission be performed by legislative staff agencies or the Departments of Treasury/Public Safety 'within existing appropriations'." However, the CDPS response asserts that "if the General Assembly passes this bill without additional appropriations, the Executive Branch will be required to limit other critical activities, and potentially lay off existing staff" due to inadequate existing staff in either CDPS or the treasury to support the LNFWC.

This fiscal note concurs that additional appropriations may be required to fulfill the requirements of HB 12-1352. Accordingly, costs and items that may warrant attention in the annual budget process are noted in the State Expenditures section. Nonetheless, the fiscal note concludes that Executive Branch impacts of the magnitude reported by CDPS are not likely to result from the activities of the legislatively-directed LNFWC.

Based on the scope of LNFWC activities prescribed by the bill, costs for reports and the claims evaluation process will be substantially less than estimates provided by CDPS. The causes and impacts report due December 31, 2012, is a summary of findings and recommendations from testimony received by the LNFWC during its 2012 interim schedule. The bill does not require this report to provide any specific level of detail, adhere to forensic standards, or draw any particular conclusions. The bill does not imply or dictate that this product is comparable to prior comprehensive reports on wildfire incidents. Likewise, the bill does not dictate that the claims administration process will adhere to particular investigative or adjudicatory precedents. Taking note that the bill allows the LNFWC to rely on the written record to determine how it will evaluate claims, this fiscal note concludes that an average of eight hours will be expended to evaluate each claim. The CDPS response states that each claim will require 8 hours of special investigation, 40 hours of expert analysis, 16 hours of legal preparation, and 24 hours of time before a decision-maker, totaling 88 hours for each claim. The intensive process envisioned by CDPS — possibly more exhaustive than the court process — is contrary to the intent of the bill, which seeks to expedite resolution of claims from the Lower North Fork Wildfire and presumes that the LNFWC will develop a plan for payment of claims.

State Appropriations

If the interim committee work of the LNFWC is prioritized by the Legislative Council and included as part of the Legislative Branch budget for FY 2012-13, no appropriation is required. If not, the bill requires a General Fund appropriation of at least \$25,832 and 0.4 FTE to the Legislative Branch in FY 2012-13.

Departments Contacted

Judicial
Treasury
Natural Resources
Law

Higher Education
Local Affairs
Public Safety
Personnel

Joint Budget Committee Staff
Office of State Planning & Budgeting
Legislative Council Staff
Office of Legislative Legal Services