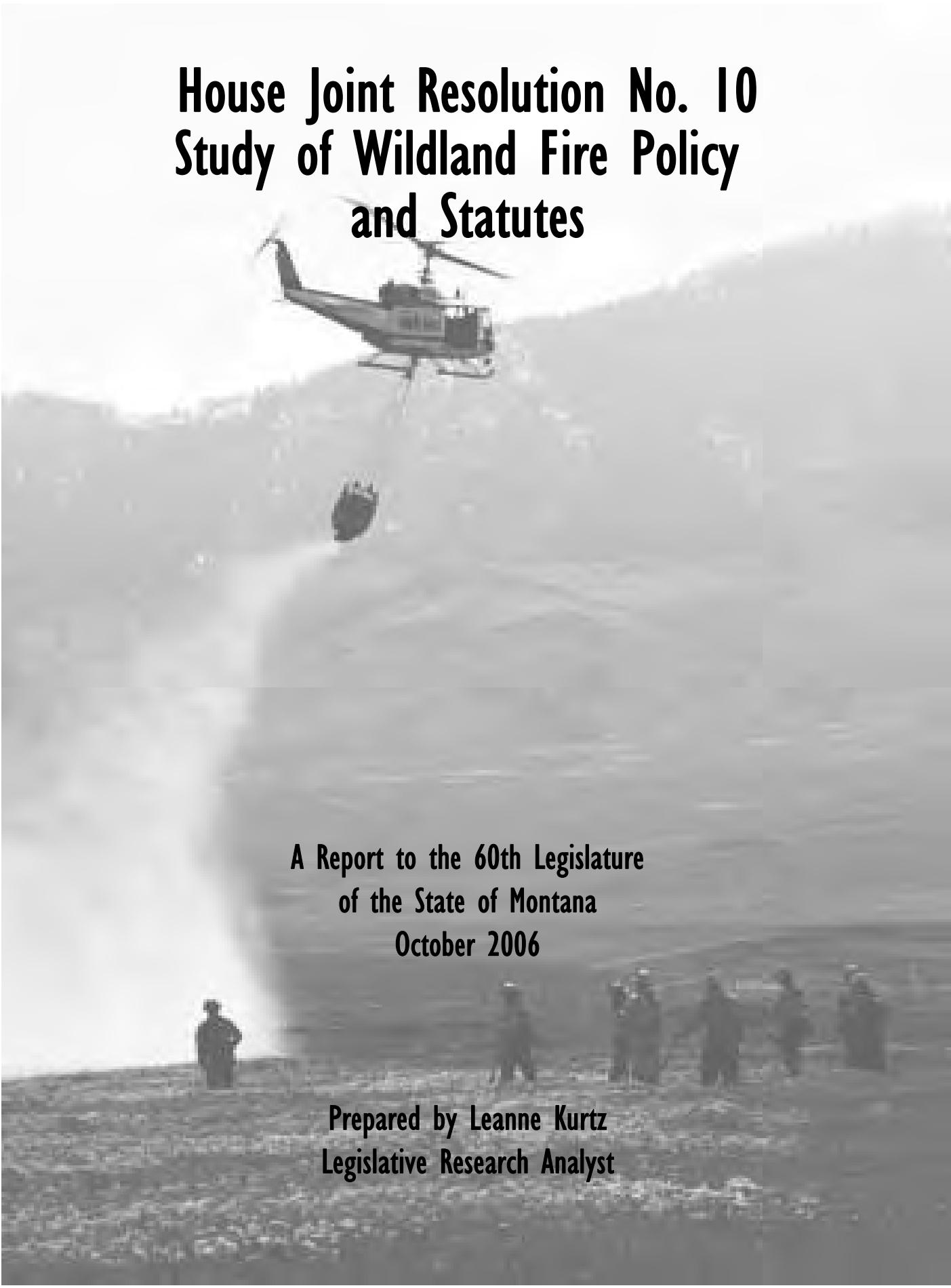


# **House Joint Resolution No. 10**

## **Study of Wildland Fire Policy and Statutes**



**A Report to the 60th Legislature  
of the State of Montana  
October 2006**

**Prepared by Leanne Kurtz  
Legislative Research Analyst**

Water drop

Photo courtesy of the Montana Department of Natural Resources and Conservation

# **House Joint Resolution No. 10**

## **Study of Wildland Fire Policy and Statutes**

### **Environmental Quality Council Members**

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#### **Governor's Representative**

Mr. Mike Volesky

#### **Study Subcommittee Members**

Representative Walt McNutt, Chairperson  
Representative Sue Dickenson, Vice Chairperson  
Senator Greg Lind  
Senator Bob Story  
Mr. Buzz Mattelin

#### **Legislative Environmental Policy Office Staff**

Todd Everts, Legislative Environmental Policy Analyst; Krista Lee Evans, Resource Policy Analyst; Joe Kolman, Resource Policy Analyst; Maureen Theisen, Publications Coordinator

#### **Environmental Quality Council**

PO Box 201704  
Helena, MT 59620-1704  
Phone: (406) 444-3742  
Fax: (406) 444-3971  
Website: <http://leg.mt.gov/css/Services%20Division/Lepo/default.asp>

#### **Study Subcommittee Staff**

Krista Lee Evans, Legislative Research Analyst  
Leanne Kurtz, Legislative Research Analyst/HJR 10 staff



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# Introduction

Every summer, as the tall grass fed by spring rains begins to brown and the drenching thunderstorms of June give way to dry lightning and hot winds that sear the landscape and suck what's left of spring's moisture from the air, Montanans begin to think about wildfire. It always seems to start with a spectacular sunset one evening and the faintest hint of smoke on the horizon, blown over from some fire in Oregon or Washington that's not our problem.

Every season is different, but along with death and taxes, one thing Montanans can count on is wildfire. And while most only start thinking about it in July and promptly tuck those thoughts away with the lawn furniture at the first sign of snow, wildfire—how to mitigate it, how to suppress it, how to pay for it—is a year-round concern for state and local fire suppression agencies, which operate under a collection of laws that have been enacted, amended, re-amended, organized, and reorganized over the years. Circumstances change, technology changes, population grows and changes, and weather patterns change. House Joint Resolution No. 10 (HJR 10), passed by the 2005 Legislature recognized what professionals working in the wildfire arena have been asserting for years: the laws have not kept up with those changes.



Photo courtesy of the U.S. Forest Service

**How to mitigate, suppress,  
and pay for wildfire is a  
year-round concern for state and  
local fire-suppression agencies.**

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During the 2005-2006 interim, a work group sanctioned by the EQC Study Subcommittee endeavored to correct inconsistency, modernize policy, institute policy where none existed, and clarify authority where—at least in the Montana Code Annotated (MCA)—authority has been murky at best.

## Background

The Montana Legislature has considered a number of wildfire-related measures and at least one interim study over the past several years. These bills and studies have primarily focused on costs associated with wildfire suppression and how the Department of Natural Resources and Conservation's (DNRC) wildfire suppression programs are funded. The substance of the laws dealing with fire and the areas where laws were silent had not emerged as a primary focus of study until a 2004 Legislative Audit Division Performance Audit Report recommended, among other things, that "the Legislature authorize a study to develop and update fire-related statutes to address current development and environmental conditions and improve wildland fire suppression management and mitigation".<sup>1</sup>

The Audit Report explores and makes recommendations to DNRC regarding numerous aspects of wildfire suppression, including fire costs, communication and coordination among local, state and federal agencies, and availability of resources. To gather information for the report, audit staff engaged in fieldwork and interviewed wildfire professionals at the local, state, and federal levels. Through these interviews it became evident to audit staff that state statutes were in dire need of update and revision and that statutes "no longer reflect reality with regard to fire agencies and fire operations at the local and state level". The report also finds that statutes "provide no guidance for overall wildland fire policy and are scattered throughout the MCAs. DNRC is placed in a position to develop its own general direction and subsequent strategies."<sup>2</sup> DNRC concurred with the report's conclusions, and DNRC staff conducted preliminary research into the sections of the MCA that reference fire.

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<sup>1</sup> "Wildland Fire Administration", Performance Audit Report to the Legislature, December 2004, pp. S-11 & S-12.

<sup>2</sup> "Wildland Fire Administration", Performance Audit Report to the Legislature, December 2004, p. 109.

Representative Hal Jacobson, a member of the Audit Committee, converted the Audit Report recommendation into a request for an interim study and introduced HJR 10 during the 2005 session. The measure easily passed both houses. In April 2005, legislators were polled in order to prioritize the 22 interim study resolutions that had passed. HJR 10 was ranked 8th, and in June, the Legislative Council assigned the study to the Environmental Quality Council, which, in turn assigned the resolution to its Study Subcommittee.

At the Subcommittee's first meeting, DNRC Director Mary Sexton proposed that a work group be assembled to assist legislative staff in conducting the study. The group, through legislative staff, would regularly report to the Subcommittee and bring the results of its work to the Subcommittee for review, approval, and submission to the full EQC. The Subcommittee endorsed this approach and incorporated it into its work plan.

## HJR 10 Work Group

In late June, staff sent a letter (Appendix A) to 20 potential work group members, soliciting their participation in the study. The majority responded affirmatively, and 13 members attended the first meeting in mid-July. From July through May 2006, the group met once a month for at least 4 hours each meeting to complete its work. The participation of many of the work group members required their travel from Belgrade, Missoula, and northwestern Montana, but attendance at meetings was never problematic and members remained very engaged throughout the process.

Members who attended regularly and the organizations they represent are as follows:

Individual	Organization
Brett Waters, President	Montana Fire Wardens Association
Scott Waldron	Montana Fire Chiefs Association
Allen Lorenz, Montana State Fire Marshal	Fire Marshal's Office, Department of Justice
Debra Foley, President	Montana Forest Landowners Association

<b>Individual</b>	<b>Organization</b>
Ellen Engstedt, Executive Vice President	Montana Wood Products Association
Jason Todhunter	Montana Logging Association
Art Vail, Flathead Unit Manager	Plum Creek Timber Co.
Harold Blattie, Executive Director	Montana Association of Counties
Bob Harrington, Division Administrator	Department of Natural Resources and Conservation, Forestry Division
Ted Mead, Bureau Chief	Department of Natural Resources and Conservation, Fire & Aviation Management Bureau
Mark Phares, Legal Counsel	Department of Natural Resources and Conservation
John Monzie	Department of Natural Resources and Conservation, Fire & Aviation Management Bureau
Garry Williams	Department of Natural Resources and Conservation, Forestry Division
Doug Williams, Rural Fire Coordinator	Department of Natural Resources and Conservation
Bruce Suenram, President	Fire Logistics, Inc.
James Kemble	Montana Association of Registered Land Surveyors
Martha Smith	Disaster and Emergency Services, Department of Military Affairs

When the group began its discussions of the wildland-urban interface, additional members began to attend and contribute. Those included:

<b>Individual</b>	<b>Organization</b>
Glenn Oppel	Montana Association of Realtors
Michael Kakuk	Montana Building Industry Association

## **Approach to HJR 10 Study**

Taking their cue from the language in HJR 10 and with the approval of the Subcommittee, legislative staff and the work group broke the study into three parts: (1) development of a state fire policy, (2) statute review, and (3) addressing the wildland-urban interface.

At one of its first meetings, the group identified some of the problems members hoped the study and the legislation it produced could alleviate. The problems articulated included:

1. There is confusion over who responds to a fire, who has ultimate authority, and who pays for that response when the fire is in an area where multiple entities have jurisdiction.
2. There is increased movement into the wildland-urban interface and local governments, with unclear authority, vary in their approaches to handling that development.
3. There are practices employed by local governments—such as imposing fire restrictions—that are not specifically authorized by law but that are in the interest of public safety.
4. Conflicts arise when fires burn on private land but may threaten public safety.
5. Outdated language and areas of ambiguity in the law further muddy inherently complex multijurisdictional fire prevention and response duties.

## **State Fire Policy**

Establishment of a state fire policy had been a primary goal of the work group since its inception. The 2004 Audit Report noted several times that overall fire policy



Thompson/Flat Complex, 2000  
Photo courtesy of the U.S. Forest Service

Establishment of a state fire policy had been a primary goal of the work group since its inception.

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study, a work book was prepared for each member that contained not only those statutes, but relevant administrative rules and Attorney General Opinions. The group agreed to approach statute review in a systematic fashion and dedicated several meetings and numerous hours to section-by-section examination of each statute. It became clear not only where current law was outdated and inconsistent but also where statutes were silent and where gaps in policy existed. After each meeting, legislative staff incorporated the suggested changes in bill draft format and the group reviewed the changes again as bill drafts.

guidance is a glaringly absent from the MCA. DNRC staff proposed several of the points in the suggested fire policy, and the group also looked at fire policies and similar statutes in other states, specifically Colorado, to develop what it considered an appropriate set of statements. The wording was revisited and massaged at nearly every work group meeting. The group's proposal appears as a new section in LC 2002 (Appendix E), intended to be codified in Title 76, chapter 13.

## **Statute Review and Resulting Proposed Bill Drafts**

In response to the 2004 Audit Report, prior to the 2005-2006 interim, DNRC staff identified and printed all of the MCA sections that deal with fire in Titles 2 through 90. For the HJR 10

Proposed amendments to current law run the gamut from code cleanup and "housekeeping" measures to significant changes in and clarification of public policy. Following are summaries of the proposed changes.

### **LC 2000 (Appendix C): Office of the Fire Marshal, Penalties for Violations**

Many of the amendments in LC 2000 affect the Department of Justice's Fire Prevention and Investigation Section (the State Fire Marshal's office), which deals with structure safety and both structure and wildland fires.

Some of the more significant public policy changes proposed in LC 2000 are provided below.

1. LC 2000 requires municipalities and governmental fire agencies to adopt the same fire codes as are adopted by the Department of Justice [section 22 (50-61-102)]. This change was requested by the State Fire Marshal in the interest of achieving consistency across jurisdictions. Department of Labor and Industry administrative rules contain similar requirements for adoption of building codes.
2. LC 2000 changes the penalty for setting or leaving a fire that causes damage [section 31 (50-63-102)]. This section already provides a civil penalty (a fine) but it is not articulated as such, and it is difficult to see how this offense, if malicious intent is determined, would differ from arson or negligent arson [section 45-6-102]. The work group proposes leaving intact only the portion of the section that has no motive associated with it, increasing the minimum fine from \$10 to \$50, and striking the rest of the provisions in that section. A fire that is set maliciously can be considered arson or negligent arson and is covered under Title 45. Lighting campfires or throwing lighted materials [subsection (2)] are offenses that are covered elsewhere in the code as well.
3. LC 2000 clarifies that the liability of a person who starts a fire includes costs associated with investigation of the fire and with administration of fire suppression [Section 32 (50-63-103)].

4. LC 2000 requires fire incident reports to be filed with the Department of Justice [Section 34 (50-63-203)]. This change was also at the request of the State Fire Marshal. The language that appears in Section 34 is nearly identical to the way the section read before the 2003 session. Subsection (3) was removed, apparently because the Department was facing budget cuts. Since those reports have not been required, records of fires maintained at the Department of Justice are incomplete and spotty.

#### **LC 2001 (Appendix D): State and Local Government Restriction Authority**

LC 2001, in general, deals with restricting activity in high fire hazard areas and with closing areas to access if fire danger is considered to be extreme. The proposed bill does not grant any new authority to the Governor; it does grant new authority to County Commissioners and codifies DNRC authority, which had previously existed in administrative rule. It also clarifies the current authority of the Governor and the presiding officer of a Board of County Commissioners to "close" lands when fire danger is extreme.

1. DNRC administrative rule<sup>3</sup> allows the Department to request and compel, if necessary, those operating in wildland areas to cease operations or operate only at certain times of the day. Section 1 of LC 2001 codifies that authority and allows DNRC to require those in high fire hazard areas to cease operations.
2. Language in section 2 is also similar to a provision in DNRC administrative rule,<sup>4</sup> prohibiting entry onto areas that have been "closed".
3. Section 3 gives County Commissioners the same authority as is given to DNRC. This change was requested by the Montana Association of

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<sup>3</sup> ARM 36.10.119, Forest Activity Restrictions.

<sup>4</sup> ARM 36.10.120, Forest Closure.

Counties. Many counties restrict activity when fire danger is high even though that authority has never been clearly articulated in statute.

4. Section 4 simply clarifies how the Governor may close land to access, and section 5 clarifies the same for County Commissioners.
5. Section 6 is also amended for clarification purposes and because "closes an area to trespass" is not appropriate language. With the amendments, closure authority is clear and cross-referenced and the authority of the Department of Fish, Wildlife, and Parks is retained to restrict hunting and fishing in an area if requested by County Commissioners. Referencing county authority to close areas in subsection (1) is not granting new authority, simply referencing existing authority.

#### **LC 2002 (Appendix E): DNRC Fire Suppression Responsibility and Authority**

In LC 2002, the work group proposes significant amendments to Title 76, chapters 11 and 13, where DNRC fire suppression responsibility and authority is codified.

1. LC 2002 reorganizes Title 76, chapters 11 and 13. They have been amended in a piecemeal fashion over the years, they don't make logical sense, and many of the sections are throwbacks to an era when forest resources were considered valuable for national security. Fire suppression on nonforested land was not considered a priority. In addition, some sections in Title 76, chapter 13, part 2, are not codified in an appropriate location.
2. Where appropriate, LC 2002 generalizes references to forest—for example, converting "forest land", "forest fire", and "forest resources" to "wildland", "wildfire", and "natural resources" to reflect current circumstance and practice. While DNRC imposes fire protection assessments only on land it classifies as forest land, fires controlled by DNRC are not limited to forest fires and lands protected by various jurisdictions are not strictly forested land.

3. Portions of LC 2002 are intended to clarify fire protection responsibilities among jurisdictions.
4. The proposed state fire policy appears in LC 2002, to be codified in Title 76, chapter 13.
5. LC 2002 is intended to respond to the portion of the December 2004 Audit Report that states: "Given the absence of overall fire management policy, the inapplicability of some statutes to current circumstance, and the general consensus among officials associated with fire administration that statutory revision/update is needed; the legislature needs to establish policy in this area."<sup>5</sup>

#### **LC 2003 (Appendix F): Local Government Fire Suppression Responsibility and Authority**

LC 2003 amends portions of Title 7, chapter 33, which govern local government fire control entities. Throughout the statute review process, the group proposed consistently changing references to entities organized under Title 7, chapter 33 to "governmental fire agencies".

The general policy goals in LC 2003 are as follows.

1. The term "freeholder" is found throughout Title 7 of the MCA. It is archaic, and its meaning and application have been the subject of litigation. The work group asked Greg Petesch, the Legislature's chief legal counsel, to help it develop a better way to identify those who may petition for creation, consolidation, division, annexation, and dissolution of rural fire districts. At Mr. Petesch's suggestion, the group proposes changing "freeholder" to "registered voter" who resides in the area that is the subject of the petition. Work group members understood that this was a significant public policy shift and wanted to make sure that the members of the EQC Study Subcommittee understood their reasoning.

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<sup>5</sup> "Wildland Fire Administration", Performance Audit Report to the Legislature, December 2004, p. 109.

Mr. Petesch presented information about the change to the Subcommittee at its January 26, 2006, meeting.

Mr. Petesch told the Subcommittee that under current fire district laws, only those who own title to property may petition for a rural fire district. However, he said, "the purpose of a fire district is to provide fire protection to people residing in the district. You can reside in a district without owning property. Fire protection is a governmental service that falls within traditional police power of government—it is one of those fundamental things that government is organized for; it is public safety the same way as police protection is a public safety concept."

A renter residing in a rural fire district has an interest in that renter's personal property being protected, just as a property owner would want the owner's real property protected. Because of that interest, Mr. Petesch suggested—and the work group agreed—that the renter should have standing in petitions for rural fire districts.

The transcript of Mr. Petesch's discussion with the Subcommittee contains additional background information about the legal meaning of "freeholder" and how it has been interpreted for other special districts (Appendix B).

2. The work group proposes allowing cities and towns to be included in rural fire districts, but only if the city or town council agrees.
3. LC 2003 contains updated language governing fire district trustees.
4. LC 2003 includes cross-references to Title 76 and applies consistent use of concepts and terminology with appropriate provisions of Title 76. It also attempts to clarify county fire protection responsibility.

#### **LC 2004 (Appendix G): Mutual Aid Agreements**

The amendments to current law in LC 2004 came to the work group at the request of a consortium of the Montana Fire Chiefs Association and Montana Mutual Aid. LC

2004 includes governing bodies of political subdivision in other states among the entities with which Montana may enter into mutual aid agreements. The proposed legislation would also require the Governor to designate political subdivisions as officials authorized to request and receive mutual aid assistance.

Members of the group thought the proposal was relevant to the study and agreed to include it among their work products.

## Wildland-Urban Interface

The wildland-urban interface (WUI) is defined by the National Wildfire Coordinating Group's *Glossary of Wildland Fire Terminology* as "the line, area, or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels". HJR 10 specifically refers to the WUI in its preamble,

"WHEREAS, movement into the wildland/urban interface has increased both the risk to inhabitants and the cost of fire suppression"

and refers to it in the body of the resolution, requesting that the study develop and update statutes "to address dangerous environmental conditions and areas of wildland/urban interface".

The work group began discussions of the WUI in late winter 2006, and on March 16, work group members and others held a panel discussion on the WUI before the Subcommittee. The perspectives represented on the panel included DNRC, local fire departments, the building and development industry, the insurance industry, and private landowners. Each participant was asked to discuss means that are already available to landowners and communities to mitigate catastrophic fire in the WUI, problems associated with residential development in the WUI, and specific legislative options (if any are believed to be necessary) for addressing those problems.

In addition, DNRC staff presented extensive background information on wildfire mitigation and suppression in the WUI and how it differs from wildland fire mitigation

and suppression. Legislative staff also presented a report on WUI-related laws and policies in Utah, Arizona, Oregon, and California.

Through the work group's discussions and presentations by the panelists, it became clear that the primary problems with Montana law in this area are as follows:<sup>6</sup>

1. Montana law does not specifically recognize or define the WUI.
2. There is disagreement regarding authority of state and local governments to regulate building and development in areas that may be considered the WUI, in part because authority is not clearly articulated in the MCA, nor is the WUI specifically defined.

At the conclusion of the panel discussion, Subcommittee members expressed their reluctance to impose new restrictions on growth and development in the WUI through statutory revision. Members did agree, however, that clarification of authority would be appropriate.<sup>6</sup>



Grave Fire, Nine Mile Valley, 2000  
Photo courtesy of the U.S. Forest Service

One of the primary problems with Montana law is that it does not specifically recognize or define the wildland-urban interface.

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<sup>6</sup> If the work group was able to reach consensus on a measure that would clarify authority in the WUI, it planned to propose the draft to the Subcommittee at its May 2006 meeting. If more time was needed and if the Subcommittee agreed, the group would take its proposal to the Local Government Subcommittee of the Education and Local Government Interim Committee, which operates under different timelines. The work group determined that more time was needed and EQC

In addition to clarifying authority, the work group proposes a definition of the WUI, similar to that provided in the National Wildfire Coordinating Group's *Glossary of Wildland Fire Terminology* (see LC 2002, section 3). The work group also proposes that a statement recognizing the WUI be incorporated in the state fire policy.

## **Findings and Recommendations**

The following are the Subcommittee's HJR 10 findings and recommendations.

### **Findings**

1. Statutes related to fire in numerous titles throughout the Montana Code Annotated need to be made consistent, clear, and current and need amendment to reflect the realities of fire protection across multiple jurisdictions.
2. Authorities for imposing restrictions on activity during periods of high fire danger are not clearly articulated in the Montana Code Annotated, nor is it clear how areas may be closed to access during fire-related disasters and emergencies.
3. A state fire policy, codified in the Montana Code Annotated, would express the Legislature's general intent with regard to wildland fire mitigation and suppression and would help maintain consistency as statutes are amended and new statutes are enacted.
4. Wildfire mitigation and suppression in the wildland-urban interface (WUI) is significantly different from wildland fire mitigation and suppression, both in tactics used and in cost.
5. While Western states have adopted a variety of approaches to regulate development and building in the WUI, there also exist ways for

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formally referred discussion of the WUI to the Local Government Subcommittee.

individuals, private enterprise, and communities to mitigate catastrophic fire in the WUI outside of a regulatory environment.

6. In Montana, it is unclear what means exist for local governments to regulate development and require certain building standards in subdivisions located in the WUI and it is unclear how that authority may be implemented, which has resulted in litigation.
7. The WUI presents a complex set of challenges that may require more time to address than the EQC is able to devote.
8. Fires burning on public land may threaten private land and public safety.

### **Recommendations**

1. A working group of interested individuals and experts in fire mitigation and suppression should undertake a thorough review of the sections in the Montana Code Annotated that deal with fire.
2. The Subcommittee will consider the legislation proposed by the working group to update and clarify fire-related statutes, to fill in blanks where needed authority to restrict activity during wildfire season is unclear or nonexistent, and to remove conflict and provide consistency. The Subcommittee will recommend that the legislative proposals it considers to be appropriate be formally requested by the EQC and drafted by staff for introduction in the 2007 legislative session.
3. The Subcommittee agrees that current local authority to regulate or restrict development and dictate building standards in the WUI is unclear and is inconsistently applied.
4. The Subcommittee recommends that the EQC exercise its prerogative under section 5-5-202(3), MCA, and refer the WUI portion of the HJR 10 study to the Local Government Subcommittee of the Education and Local Government Interim Committee. Following the Local Government

Subcommittee's formal acceptance of the referral, the HJR 10 work group will take its direction from and bring its proposals before that entity.

## Conclusion

The proposed bill drafts that resulted from the HJR 10 work group's efforts represent many hours of discussions, occasionally tedious examination of current law, and constant comparison of the existing law to current practice and the realities of wildland fire suppression. Group members worked diligently and compromised often to arrive at the proposed amendments and new public policies that are incorporated in the drafts.

Wildfire enters the consciousness of many Montanans, especially those who live in cities, about the time they smell the smoke. For state and local fire suppression agency employees and volunteers, fire professionals in private industry, property owners in the WUI, and local governments, wildfire—and how to properly manage it—is an ongoing concern whether it's 90 degrees in mid-August or 20 degrees below zero on Christmas Eve. HJR 10 and the products of the work group ensure that state policymakers become part of that dialogue.

## Appendix A



### ENVIRONMENTAL QUALITY COUNCIL

PO BOX 201704  
HELENA, MONTANA 59620-1704  
(406) 444-3742

**GOVERNOR BRIAN SCHWEITZER  
DESIGNATED REPRESENTATIVE  
MIKE VOLESKY**

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KRISTA LEE EVANS, Research Analyst  
JOE KOLMAN, Research Analyst  
CYNTHIA PETERSON, Secretary  
TODD EVERTS, Legislative Environmental

**TO:** Potential interested persons  
**FROM:** Leanne Kurtz, Legislative Research Analyst/HJR 10 staff  
**DATE:** June 24, 2005  
**RE:** HJR 10 Study of Wildfire Suppression

You have been identified as a possible participant in a working group being formed to address the above-referenced study, requested by the 2005 Legislature through House Joint Resolution No. 10 and assigned to a subcommittee of the Environmental Quality Council (EQC). I have enclosed a copy of the resolution for your review.

The EQC Assigned Studies Subcommittee, which consists of Representatives McNutt (chair) and Dickenson, Senators Story and Lind, and Mr. Mattelin, has endorsed the working group approach to this study. The idea is to solicit from those of you with the professional experience and knowledge of the various aspects of wildland fire suppression and mitigation information on what is working and what isn't working in this arena and suggestions on what the legislature might be able to do to address the problems.

It is clear from the wording of HJR 10 that Montana statutes are inadequate or silent with regard to many of the significant issues surrounding wildland fires and the subcommittee requests your assistance in identifying the gaps and proposing solutions.

I understand that this is a busy season for many of you but would like to propose a working group meeting for the week of July 18 at the Capitol building in Helena. If you are interested in participating in the working group and have a preference for a meeting day that week, please call me or e-mail me with your preference at (406) 444-3593 or [lekurz@mt.gov](mailto:lekurz@mt.gov) by June 30 if at all possible. The primary purpose of this first meeting would be to simply collect ideas from you on where you think the problems lie and what you would like to see result from this study.

I have also enclosed a list of individuals to whom I have sent this letter. If you have suggestions for others whose input you think may be valuable to the process, please feel free to relay that information as well. Thank you. I look forward to working with you.



## **Appendix B**

### **TRANSCRIPT**

#### **Comments from Greg Petesch to the EQC Study Subcommittee - Meeting of January 26, 2006 Transcribed April 25, 2006**

I was asked to discuss the concept of freeholder with the work group. First of all, a freeholder is a person who has titled property that is either legal or equitable title. A freeholder is also further defined as a person who holds an estate in real property either by inheritance or for life. A taxpayer is a different concept because taxes can be paid on personal property in addition to real property. The courts further interpreted freeholder to mean the purchaser and not the seller under a contract for deed and that is the equitable title aspect of the concept. This is a major policy change and that is the reason I am here to discuss this.

Under current fire district laws, those people who own title to real property are the ones who are authorized to petition for the creation or dissolution of a fire district. There have been a large number of cases that have challenged the concept of whether a freeholder status is appropriate.

In a fairly recent case (1995), the Montana Supreme Court said that not allowing people who didn't own real property, those who weren't freeholders, was not inappropriate for an irrigation district, because irrigation districts are special limited purpose units of local government whose function has a disproportionate effect on landowners in the district as a group. Therefore it was appropriate to depart from the usual "strict scrutiny standard" under equal protection that applies to statutes that impact your right to vote, and to use a "rational basis standard" instead. Under equal protection analysis, the minimum standard is the "rational basis". There is a middle tier scrutiny for certain constitutionally recognized functions, and then there is a "strict scrutiny standard" that applies to a specific constitutionally protected entity, and under a "strict security" analysis, essentially the statute is always stricken down.

So with that concept in mind, we discussed some of the varying interpretations of "freeholder". I admit I can't grasp a consistent line of reasoning through the cases that have attempted to apply the equal protection test to a freeholders status. The reason I say that is with regard to annexation laws, the court said that neither a corporation, nor a partnership is considered a freeholder for purposes of annexation. However, for purposes of a planned unit development in Montana they are a resident freeholder. I really can't see the distinction between bringing property into a city, and a statute that tells how you develop property within a city.

The purpose of a fire district is to provide fire protection to people residing in the district. You can reside in the district without owning property. Fire protection is a governmental service that falls within traditional police power of government--it is one of those fundamental things that government is organized for--it is public safety--the same way as police protection is a public safety concept. I believe it's not unlikely that if a challenge were

brought to the freeholder concept for fire protection that a higher standard than a "rational basis" would be likely to be applied.

The same concept was applied to building codes, as to whether a person who didn't own real property could want to be included in an area that had building codes, for example municipalities have residential building codes but the state doesn't, so could you petition to be brought into the "donut area", when we allowed those, if you weren't a property owner. Because you were renting a space in a building, it was felt that it was appropriate that those people who were registered voters in the donut area would be allowed to participate in that type of decision.

I think the same analogy would be applied to a person who was renting property and residing in a fire district. Certainly you want your personal property protected to the same extent you want real property protected. But that is a significant policy change. That is the discussion that was had with the work group. The work group felt that fire protection was a generally applicable provision even though the payment for the fire protection is through levies, and those do fall on the property owners, that fire protection is afforded to everyone in the district whether they are property owners or not once the district is created. So that was the basis upon which the working group proposed making the change from a freeholder requirement for creation or elimination of a fire district and went with the concept of those registered voters.

## Appendix C

LC2000

\*\*\*\*\* Bill No. \*\*\*\*\*  
Introduced By \*\*\*\*\*  
By Request of the \*\*\*\*\*

HJR 10 PROPOSED BILL #1

A Bill for an Act entitled: "An Act generally revising laws governing the department of justice's fire prevention and investigation section and laws referencing and governing local governmental fire agencies; defining "governmental fire agency" and standardizing its usage; clarifying that a chief of a governmental fire agency may receive confidential criminal justice information; eliminating restrictions on pay for special fire inspectors; requiring municipalities and governmental fire agencies to adopt the same fire codes as the codes adopted by the department of justice; clarifying the penalty for setting or leaving a fire that causes damage and increasing the minimum fine; eliminating duplicate provisions prohibiting certain campfires and throwing lighted material; requiring fire incident reports to be filed with the department of justice; and amending sections 2-7-501, 2-15-1519, 2-15-2005, 7-6-204, 18-8-202, 25-13-613, 27-1-714, 39-71-118, 40-6-402, 44-5-103, 44-5-303, 46-18-261, 50-3-101, 50-3-102, 50-3-106, 50-5-215, 50-19-403, 50-37-107, 50-37-108, 50-37-109, 50-60-202, 50-61-102, 50-61-

114, 50-61-115, 50-61-121, 50-62-101, 50-62-102, 50-62-103, 50-62-112, 50-63-102, 50-63-103, 50-63-202, 50-63-203, 50-63-401, 50-63-402, 50-63-404, 50-78-102, 52-2-733, 52-2-734, 52-4-205, 53-20-307, 61-8-102, 61-8-364, 61-9-402, and 75-10-725, MCA."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 2-7-501, MCA, is amended to read:

**"2-7-501. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.

(2) "Board" means the Montana board of public accountants provided for in 2-15-1756.

(3) "Department" means the department of administration.

(4) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan

guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

(b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.

(5) "Financial report" means a presentation of financial statements, including applicable supplemental notes and supplemental schedules, that are prepared in a format published by the department using the Budgetary Accounting and Reporting System for Montana Cities, Towns, and Counties Manual and that reflect a current financial position and the operating results for the 1-year reporting period.

(6) "Independent auditor" means:

(a) a federal, state, or local government auditor who meets the standards specified in the government auditing standards; or

(b) a licensed accountant who meets the standards in subsection (6)(a).

(7) (a) "Local government entity" means a county, city, district, or public corporation that:

(i) has the power to raise revenue or receive, disburse, or expend local, state, or federal government revenue for the purpose of serving the general public;

(ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and

(iii) receives local, state, or federal financial assistance.

(b) Local government entities include but are not limited to:

(i) airport authority districts;

(ii) cemetery districts;

(iii) counties;

(iv) county housing authorities;

(v) county road improvement districts;

(vi) county sewer districts;

(vii) county water districts;

(viii) county weed management districts;

(ix) drainage districts;

(x) ~~fire department relief associations companies~~;

(xi) fire districts;

(xii) fire service areas;

~~(xiii)~~(xiii) hospital districts;

~~(xiii)~~(xiv) incorporated cities or towns;

~~(xiv)~~(xv) irrigation districts;

~~(xv)~~(xvi) mosquito districts;

(xvii) municipal fire departments  
(xvi)(xviii) municipal housing authority  
districts;  
(xvii)(xix) port authorities;  
(xvii)(xx) solid waste management  
districts;  
(xix)(xxi) rural improvement districts;  
(xx)(xxii) school districts including a  
district's extracurricular funds;  
(xxi)(xxiii) soil conservation districts;  
(xxii)(xxiv) special education or other  
cooperatives;  
(xxiii)(xxv) television districts;  
(xxiv)(xxvi) urban transportation districts;  
(xxv)(xxvii) water conservancy districts;  
and  
(xxvi)(xxviii) other miscellaneous and  
special districts.

(8) "Revenues" means all receipts of a local government entity from any source excluding the proceeds from bond issuances."

{*Internal References to 2-7-501:*  
70-9-802 }

**Section 2.** Section 2-15-1519, MCA, is amended to read:

**"2-15-1519. Fire services training advisory council.** (1) The board of regents shall appoint a fire services training advisory council to work with the director of the fire services training

school. The membership of the council shall include the following:  
(a) a fire chief;  
(b) a volunteer firefighter;  
(c) a paid firefighter;  
(d) a fire service instructor;  
(e) a person involved in fire prevention;  
(f) a representative of the insurance industry; and  
(g) a professional educator.  
(2) The board shall solicit and consider the recommendations of appropriate organizations and associations of fire service personnel in making appointments under subsection (1).  
(3) Members shall serve for 4-year terms and may be removed for cause. If a vacancy occurs, a member must be appointed to fill the unexpired term. A member may be reappointed.  
(4) A representative of the state fire prevention and investigation program section of the department of justice, a fire control officer designated by the director of the department of natural resources and conservation, and the director of the fire services training school are ex officio members of the council."

{*Internal References to 2-15-1519:*  
20-31-101 }

**Section 3.** Section 2-15-2005, MCA, is amended to read:

**"2-15-2005. State fire prevention and investigation program section -- advisory council.**

(1) There is a state fire prevention and investigation program section in the department of justice and under the supervision and control of the attorney general.

(2) A person appointed to administer the fire prevention and investigation program section shall represent the state of Montana as the state fire marshal and must be a person qualified by experience, training, and high professional competence in matters of fire service and safety.

(3) The attorney general shall create a fire prevention and investigation advisory council in accordance with procedures provided in 2-15-122."

{Internal References to 2-15-2005:  
50-3-101      77-5-104 }

**Section 4.** Section 7-6-204, MCA, is amended to read:

**"7-6-204. Crediting of interest -- exceptions.** (1) Interest paid and collected on deposits or investments must be credited to the general fund of the county, city, or town to whose credit the funds are deposited unless otherwise provided:

- (a) by law;
- (b) by terms of a gift, grant, or donation; or
- (c) by subsections (2) and (3).

(2) Subject to subsection (1), interest paid and collected on the deposits or investments of the funds of a volunteer fire district or department organized in an unincorporated area under Title 7, chapter 33, part 21 or 23, or of a fire service area or county fire department, must be credited to the account of that fire district, or department, or service area.

(3) Subject to subsection (1), interest paid and collected on the deposits or investments of any fund separately created and accounted for by a county, city, or town may be credited to the separately created fund proportionately to each fund's participation in the deposit or investment."

{Internal References to 7-6-204:  
7-6-2701      7-7-2112 }

**Section 5.** Section 18-8-202, MCA, is amended to read:

**"18-8-202. Definitions.** Unless the context clearly indicates otherwise, in this part, the following definitions apply:

- (1) "Agency" means a state agency, local agency, or special district.
- (2) "Architectural, engineering, and land surveying" means services rendered by a person, other than as an employee of an agency, contracting to perform activities within the scope of the general definition of professional practice and licensed for the respective practice as an

architect pursuant to Title 37, chapter 65, or an engineer or land surveyor pursuant to Title 37, chapter 67.

(3) "Licensed professional" or "licensed architect, professional engineer, professional land surveyor" means a person providing professional services who is not an employee of the agency for which the services are provided.

(4) "Local agency" means a city, town, county, special district, municipal corporation, agency, port district or authority, airport authority, political subdivision of any type, or any other entity or authority of local government, in corporate form or otherwise.

(5) "Person" means an individual, organization, group, association, partnership, firm, joint venture, or corporation.

(6) "Special district" means a unit of local government, other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, including but not limited to water districts, irrigation districts, fire districts, fire service areas, school districts, community college districts, hospital districts, sewer districts, and transportation districts.

(7) "State agency" means a department, agency, commission, bureau, office, or other entity or authority of state government."

{Internal References to 18-8-202:  
61-3-321      61-3-332 }

**Section 6.** Section 25-13-613, MCA, is amended to read:

**"25-13-613. Property necessary to carry out governmental functions.** (1) In addition to the property mentioned in 25-13-609(1), ~~there shall be the following property is exempt to from all judgment debtors the following property:~~

~~(a) all fire engines, hooks, and ladders, with the cart, trucks, and carriages, hose, buckets, implements, and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department organized under any laws of this state necessary firefighting equipment and facilities of any governmental fire agency;~~

~~(b) all arms, uniforms, and accouterments required by law to be kept by any person and one gun to be selected by the debtor;~~

~~(c) all courthouses, jails, public offices, and buildings, lots, grounds, and personal property, the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the courthouse, jail, and public offices belonging to any county of this state; and~~

~~(d) all cemeteries, public squares, parks, and places, public buildings, town halls, public markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining owned or held by any town or incorporated city or dedicated by such city or town to health,~~

ornament, or public use or for the use of any fire or military company organized under the laws of the state.

(2) ~~No article, however, or species of The property mentioned listed in this section is not exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage lien thereon on the property, and no a person who is not a bona fide resident of this state shall have the benefit of is not entitled to these exemptions.~~

(3) As used in this section, "governmental fire agency" means a fire protection entity organized under Title 7, chapter 33."

{Internal References to 25-13-613: None.}

**Section 7.** Section 27-1-714, MCA, is amended to read:

**"27-1-714. Limits on liability for emergency care rendered at scene of accident or emergency.** (1) Any person licensed as a physician and surgeon under the laws of the state of Montana, any volunteer firefighter or officer of any nonprofit volunteer fire company a governmental fire agency, or any other person who in good faith renders emergency care or assistance with or without compensation except as provided in subsection (2) at the scene of an emergency or accident is not liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or

omissions by such person in rendering ~~such the~~ emergency care or assistance.

(2) Subsection (1) includes a person properly trained under the laws of this state who operates an ambulance to and from the scene of an emergency or renders emergency medical treatment on a volunteer basis ~~so long as the total reimbursement received for such volunteer services does not exceed 25% of his gross annual income or \$3,000 a calendar year, whichever is greater.~~

(3) If a nonprofit subscription fire company refuses to fight a fire on nonsubscriber property, ~~such the~~ refusal does not constitute gross negligence or a willful or wanton act or omission.

(4) As used in this section, "governmental fire agency" means a fire protection entity organized under Title 7, chapter 33."

{Internal References to 27-1-714: None.}

**Section 8.** Section 39-71-118, MCA, is amended to read:

**"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) As used in this chapter, the term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The

terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-1-301;

(g) a person who is an enrolled member of a volunteer fire department, as described in 7-33-4109, volunteer firefighter or a person who

provides ambulance services under Title 7, chapter 34, part 1; and

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704 is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may only be for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(d) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area governmental fire agency.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(c) The term "governmental fire agency" means a fire protection entity organized under Title 7, chapter 33.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole

proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$900 a month and not more than 1 1/2 times the state's average weekly wage.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the

limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (6)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the state's average weekly wage.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage

divided by 40 hours, subject to a maximum of 1 1/2 times the state's average weekly wage.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in

work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d)."

{Internal References to 39-71-118:

39-71-117      39-71-123      39-71-401

39-71-4003      50-71-102 }

39-71-744

**Section 9.** Section 40-6-402, MCA, is amended to read:

**"40-6-402. Definitions.** As used in this part, the following definitions apply:

(1) "Child-placing agency" means an agency licensed under Title 52, chapter 8, part 1.

(2) "Court" means a court of record in a competent jurisdiction and, in Montana, means a district court or a tribal court.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Emergency services provider" means:

(a) a uniformed or otherwise identifiable employee of a fire department, hospital, or law enforcement agency when the individual is on duty inside the premises of the fire department, hospital, or law enforcement agency; or

(b) any law enforcement officer, as defined in 7-32-201, who is in uniform or is otherwise identifiable.

(5) "Fire department" means a fire department organized by a city, town, or city-county consolidated local government a governmental fire agency organized under Title 7, chapter 33.

(6) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(7) "Guardian ad litem" means a person appointed to represent a newborn under Title 41, chapter 3.

(8) "Hospital" has the meaning provided in 50-5-101.

(9) "Law enforcement agency" means a police department, a sheriff's office, a detention center as defined in 7-32-2241, or a correctional institution as defined in 45-2-101.

(10) "Newborn" means an infant who a physician reasonably believes to be no more than 30 days old.

(11) "Surrender" means to leave a newborn with an emergency services provider without expressing an intent to return for the newborn."

{Internal References to 40-6-402:  
41-3-102      41-3-102 }

**Section 10.** Section 44-5-103, MCA, is amended to read:

**"44-5-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

- (a) criminal investigative information;
- (b) criminal intelligence information;
- (c) fingerprints and photographs;
- (d) criminal justice information or records made confidential by law; and
- (e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and release. It includes identification

information, such as fingerprint records or photographs, unless the information is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

(i) records of traffic offenses maintained by the department of justice; or  
(ii) court records.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information, including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) (a) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes.

It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance.

(b) The term does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;  
(b) any federal, state, or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice, including a governmental fire agency, organized under Title 7, chapter 33, or fire marshal that conducts criminal investigations of fires;

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order; or

(d) any agency of a foreign nation that has been designated by that nation's law or chief executive officer to perform as its principal function the administration of criminal justice and that has been approved for the receipt of criminal justice information by the Montana attorney general, who may consult with the United States department of justice.

(8) (a) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency.

(b) The term does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by foreign, federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

- (i) conviction at trial or on a plea of guilty;
- (ii) acquittal;
- (iii) acquittal by reason of mental disease or defect;

(iv) acquittal by reason of mental incompetence;

(v) the sentence imposed, including all conditions attached to the sentence by the sentencing judge;

(vi) deferred imposition of sentence with any conditions of deferral;

(vii) nolle prosequi;

(viii) a nolo contendere plea;

(ix) deferred prosecution or diversion;

(x) bond forfeiture;

(xi) death;

(xii) release as a result of a successful collateral attack;

(xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

(xiv) a finding of civil incompetence or mental illness;

(xv) exercise of executive clemency;

(xvi) correctional placement on probation or parole or release; or

(xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains the information. It

includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Fingerprints" means the recorded friction ridge skin of the fingers, palms, or soles of the feet.

(13) "Public criminal justice information" means:

- (a) information made public by law;
- (b) information of court records and proceedings;
- (c) information of convictions, deferred sentences, and deferred prosecutions;
- (d) information of postconviction proceedings and status;
- (e) information originated by a criminal justice agency, including:
  - (i) initial offense reports;
  - (ii) initial arrest records;
  - (iii) bail records; and
  - (iv) daily jail occupancy rosters;
- (f) information considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or
- (g) statistical information.

(14) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(15) "Statistical information" means data derived from records in which individuals are not

identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable."

{Internal References to 44-5-103:

22-3-807	23-5-115	23-5-116	30-10-304
33-1-311	33-1-409	33-1-1203	33-2-1116
37-1-307	37-1-413	46-4-112	46-18-204
46-23-508	46-23-508	46-24-220	53-1-108
53-2-501	53-6-156	61-11-105	61-11-510 }

**Section 11.** Section 44-5-303, MCA, is amended to read:

**"44-5-303. Dissemination of confidential criminal justice information -- procedure for dissemination through court.** (1) Except as provided in subsections (2) through (4), dissemination of confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure. Permissible dissemination of confidential criminal justice information under this subsection includes receiving investigative information from and sharing investigative information with a ~~fire service chief of a governmental fire agency, organized under Title 7, chapter 33,~~ or fire marshal concerning the criminal investigation of a fire.

(2) If the prosecutor determines that dissemination of confidential criminal justice information would not jeopardize a pending investigation or other criminal proceeding, the information may be disseminated to a victim of the offense by the prosecutor or by the investigating law enforcement agency after consultation with the prosecutor.

(3) Unless otherwise ordered by a court, a person or criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of the information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

(4) The county attorney or the county attorney's designee is authorized to receive confidential criminal justice information for the purpose of cooperating with local fetal, infant, and child mortality review teams. The county attorney or the county attorney's designee may, in that person's discretion, disclose information determined necessary to the goals of the review team. The review team and the county attorney or the designee shall maintain the confidentiality of the information.

(5) (a) If a prosecutor receives a written request for release of confidential criminal justice information relating to a criminal investigation that has been terminated by

declination of prosecution or relating to a criminal prosecution that has been completed by entry of judgment, dismissal, or acquittal, the prosecutor may file a declaratory judgment action with the district court pursuant to the provisions of the Uniform Declaratory Judgments Act, Title 27, chapter 8, for release of the information. The prosecutor shall:

(i) file the action in the name of the city or county that the prosecutor represents and describe the city's or county's interest;

(ii) list as defendants anyone known to the prosecutor who has requested the confidential criminal justice information and anyone affected by release of the information;

(iii) request that the prosecutor be allowed to deposit the investigative file and any edited version of the file with the court pursuant to the provisions of Title 27, chapter 8;

(iv) request the court to:

(A) conduct an in camera review of the confidential criminal justice information to determine whether the demands of individual privacy do not clearly exceed the merits of public disclosure; and

(B) order the release to the requesting party defendant of whatever portion of the investigative information or edited version of the information the court determines appropriate.

(b) In making an order authorizing the release of information under subsection (5)(a),

the court shall make a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure and authorize, upon payment of reasonable reproduction costs, the release of appropriate portions of the edited or complete confidential criminal justice information to persons who request the information.

(c) In an action filed for the court-ordered release of confidential criminal justice information under subsection (5)(a), the parties shall bear their respective costs and attorney fees.

(6) The procedures set forth in subsection (5) are not an exclusive remedy. A person or organization may file any action for dissemination of information that the person or organization considers appropriate and permissible."

{Internal References to 44-5-303:  
22-3-807      33-1-1203      46-4-112  
50-19-403 }

**Section 12.** Section 46-18-261, MCA, is amended to read:

**"46-18-261. Recovery of suppression and investigation expenses for fires caused by arson.**  
(1) A person convicted of arson, negligent arson, or solicitation of or conspiracy to commit arson or negligent arson may be ordered, as part of the sentence, to reimburse law enforcement and firefighting governmental fire agencies for the

cost of suppressing and investigating a fire that occurred during the commission of the crime.

(2) The court may order a person doing a presentence investigation and report to include documentation of the costs of suppressing and investigating the fire and of the defendant's ability to pay and may receive evidence concerning the matters at the time of sentencing.

(3) The court shall specify the amount, method, and time of payment, which may include but is not limited to installment payments. The court may order a probation officer or other appropriate officer attached to or working closely with the court in the administration of justice to supervise payment and report any default to the court.

(4) Upon petition by the offender and after a hearing, the payment may be modified. Agencies receiving payment at that time must be notified of and allowed to participate in the hearing.

(5) This section does not limit the right of a law enforcement or firefighting governmental fire agency to recover from the offender in a civil action, but the findings in the sentencing hearing and the fact that payment of costs was part of the sentence are inadmissible in and have no legal effect on the merits of a civil action. Costs paid by the offender must be deducted from a recovery awarded in a civil action.

(6) As used in this section, "governmental fire agency" means a fire protection entity organized under Title 7, chapter 33."

{Internal References to 46-18-261: None.}

**Section 13.** Section 50-3-101, MCA, is amended to read:

**"50-3-101. Definitions.** In this chapter, "department" means the department of justice and "fire prevention and investigation program section" means the state fire prevention and investigation program section of the department of justice provided for in 2-15-2005."

{Internal References to 50-3-101: None.}

**Section 14.** Section 50-3-102, MCA, is amended to read:

**"50-3-102. Powers and duties of department regarding state fire prevention and investigation -- rules.** (1) For the purpose of reducing the state's fire loss, the department shall:

(a) inspect each unit of the Montana university system and other state buildings, including state institutions, as often as duties allow, but no more frequently than once each year unless requested by the commissioner of higher education for buildings in the university system, by the department of corrections or the department of public health and human services for state institutions, or by the department of administration for all other state buildings. A

copy of the inspection report for units of the university system must be given to the commissioner of higher education, a copy of the inspection report for state institutions must be given to the department of corrections and the department of public health and human services, and a copy of the inspection report for all other state buildings must be given to the department of administration. The department of justice shall advise the commissioner of higher education and the directors of the departments of corrections, public health and human services, and administration concerning fire prevention, fire protection, and public safety when it distributes the reports.

(b) inspect public, business, or industrial buildings, as provided in chapter 61, and require conformance to law and rules promulgated under the provisions of this chapter;

(c) assist local ~~fire and law enforcement authorities~~ governmental fire agencies in ~~arson~~ fire investigations and may initiate or supervise these investigations when, in its judgment, the initiation or supervision is necessary;

(d) provide fire prevention and fire protection information to public officials and the general public;

(e) serve as the state entity primarily responsible for promoting fire safety at the state level;

(f) encourage coordination of all services and agencies in fire prevention matters to reduce duplication and fill voids in services; and

(g) establish rules concerning responsibilities and procedures to be followed when there is a threat of explosive material in a building housing state offices.

(2) The department may adopt rules necessary for safeguarding life and property from the hazards of fire and carrying into effect the fire prevention laws of this state, provided the rules do not conflict with building regulations adopted by the building codes bureau of the department of labor and industry.

(3) The department shall adopt rules based on nationally recognized standards necessary for safeguarding life and property from the hazards associated with the manufacture, transportation, storage, sale, and use of explosive materials.

(4) If necessary to safeguard life and property under rules promulgated pursuant to this section, the department may maintain an action to enjoin the use of all or a portion of a an existing building or restrain a specific activity until there is compliance with the rules.

(5) Except for statements of witnesses given during an investigation, information that may be held in confidence under 50-63-403, and criminal justice information subject to restrictions on dissemination in accordance with Title 44, chapter 5, all records maintained by the

department must be open at all times to public inspection."

{*Internal References to 50-3-102:*  
45-8-332      50-3-103      50-61-102 }

**Section 15.** Section 50-3-106, MCA, is amended to read:

**"50-3-106. Appointment of special fire inspectors.** (1) Special fire inspectors may be appointed to perform any function of the fire prevention and investigation program.

(2) When performing these duties or attending a training course approved by the department, special fire inspectors may be paid at a rate not to exceed \$56 a day plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended."

{*Internal References to 50-3-106: None.*}

**Section 16.** Section 50-5-215, MCA, is amended to read:

**"50-5-215. Standards for adult foster care homes.** The department may adopt rules establishing standards for the licensing of adult foster care homes. The standards must provide for the safety and comfort of the residents and may be adopted by the department only after receiving the advice and recommendations of the state fire prevention and investigation program section of the department of justice in relation to fire and safety requirements for adult foster care homes."

**Section 17.** Section 50-19-403, MCA, is amended to read:

**"50-19-403. Local fetal, infant, and child mortality review team.** (1) A local fetal, infant, and child mortality review team must be approved by the department of public health and human services. Approval may be given if:

(a) the county health department, a tribal health department, if the tribal government agrees, or both are represented on the team and the plan provided for in subsection (1)(d) includes the roles of the county health department, tribal health department, or both;

(b) a lead person has been designated for the purposes of management of the review team;

(c) at least five of the individuals listed in subsection (2) have agreed to serve on the review team; and

(d) a plan has been developed by the team that includes, at a minimum, operating policies of the review team covering collection and destruction of information obtained pursuant to 44-5-303(4) or 50-19-402(2).

(2) If a local fetal, infant, and child mortality review team is established, the team must be multidisciplinary and may include only:

- (a) the county attorney or a designee;
- (b) a law enforcement officer;

- (c) the medical examiner or coroner for the jurisdiction;
- (d) a physician;
- (e) a school district representative;
- (f) a representative of the local health department;
- (g) a representative from a tribal health department, appointed by the tribal government;
- (h) a representative from a neighboring county or tribal government if there is an agreement to review deaths for that county or tribe;
- (i) a representative of the department of public health and human services;
- (j) a forensic pathologist;
- (k) a pediatrician;
- (l) a family practice physician;
- (m) an obstetrician;
- (n) a nurse practitioner;
- (o) a public health nurse;
- (p) a mental health professional;
- (q) a local trauma coordinator;
- (r) a representative of the bureau of Indian affairs or the Indian health service, or both, who is located within the county; and
- (s) representatives of the following:
  - (i) local emergency medical services;
  - (ii) a local hospital;
  - (iii) a local hospital medical records department;

- (iv) a local governmental fire department agency, organized under Title 7, chapter 33; and
- (v) the local registrar.

(3) The designated lead person for the team shall submit membership lists to the department of public health and human services annually."

{Internal References to 50-19-403: None.}

**Section 18.** Section 50-37-107, MCA, is amended to read:

**"50-37-107. Supervised public display of fireworks authorized.** (1) The state fire prevention and investigation program section of the department of justice or the governing body of a city, town, or county may, under reasonable rules adopted by them, grant permits for supervised public displays of fireworks to be held by municipalities, fair associations, amusement parks, and other organizations or groups of individuals.

(2) Each display shall must:

(a) be handled by a competent operator, who must be approved by the state fire prevention and investigation program section or the governing body of the city, town, or county in which the display is to be held; and

(b) be located, discharged, or fired as, in the opinion of the state fire prevention and investigation program section, or the chief of the fire department local governmental fire agency, organized under Title 7, chapter 33, or other

officer designated by the governing body of the city, town, or county after proper inspection, not to be hazardous to persons or property.

(3) Application for permits shall must be made in writing at least 15 days prior to the date of the display.

(4) After the privilege has been granted, sales, possession, use, and distribution of fireworks for the display are lawful for that purpose only.

(5) No A permit granted under this section is not transferable."

{Internal References to 50-37-107:  
50-37-102 }

**Section 19.** Section 50-37-108, MCA, is amended to read:

**"50-37-108. General liability insurance required for public display.** The state fire prevention and investigation program section or the governing body of the city, town, or county shall require a person planning a public display of fireworks to provide proof of general liability insurance in a reasonable amount as determined by rules adopted by the department of justice."

{Internal References to 50-37-108: None.}

**Section 20.** Section 50-37-109, MCA, is amended to read:

**"50-37-109. Confiscation.** A representative of the state fire prevention and investigation

program section or any sheriff, police officer, or constable, officer of a governmental fire agency, organized under Title 7, chapter 33, or firewarden shall seize, take, remove, or cause to be removed at the expense of the owner all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of this chapter."

{Internal References to 50-37-109: None.}

**Section 21.** Section 50-60-202, MCA, is amended to read:

**"50-60-202. Department to be sole state agency to promulgate building regulations -- exception.** No state agency except the department may promulgate building regulations as defined in 50-60-101, except the department of justice may promulgate regulations relating to use of buildings and installation of equipment. The state fire prevention and investigation program section of the department of justice shall review building plans and regulations for conformity with rules promulgated by the department."

{Internal References to 50-60-202: None.}

**Section 22.** Section 50-61-102, MCA, is amended to read:

**"50-61-102. Department of justice to administer chapter.** (1) The department of justice has general charge and supervision of the enforcement of this chapter, and the officers

enumerated in 50-61-114 shall act under its general charge and supervision, shall assist the department in giving effect to this chapter, and are subject to its direction and the rules adopted under 50-3-102 and 50-3-103 for the enforcement of 50-61-120 and 50-61-121 and this chapter.

(2) Upon its approval of a fire code and a plan for enforcement of the code filed by a ~~municipality, district, or fire service area or governmental fire agency~~, the department may ~~certify approve~~ a ~~municipal, district, or fire service area or fire agency~~ fire inspection program for local enforcement.

(3) (a) The fire code adopted by municipalities under 7-5-108 and 7-5-4202 and governmental fire agencies must be the same fire code that is adopted by the department of justice under this chapter.

(b) Fire codes adopted by the entities in subsection (3)(a) are subject to the same limitations provided in 50-3-103(2) and in administrative rules promulgated in accordance with 50-3-103.

(c) Each time the department of justice modifies the fire codes, municipalities and governmental fire agencies shall modify their codes to conform with the department's codes within 180 days of the department's modification.

{Internal References to 50-61-102:  
7-33-2402 }

NEW SECTION. **Section 23. Definition.** For the purposes of this chapter [Title 50, chapter 61], chapter 62, and chapter 63, "governmental fire agency" means a fire protection entity organized under Title 7, chapter 33.

**Section 24.** Section 50-61-114, MCA, is amended to read:

**"50-61-114. Fire chief and fire inspector to make inspections.** For the purpose of examining the premises for violations of this chapter and rules adopted under 50-3-103 for the enforcement of this chapter, the chief or fire inspector of the ~~fire department of each municipality, district, or fire service area~~ governmental fire agency, when a fire inspection program is established, or a fire inspector of the department of justice, when a fire inspection program does not exist:

(1) shall enter into school buildings at least once each 18 months; and

(2) may enter into all other buildings and upon all other premises within the jurisdiction, according to priority schedules established by the department for conducting inspections of buildings and premises."

{Internal References to 50-61-114:  
50-61-102 }

**Section 25.** Section 50-61-115, MCA, is amended to read:

**"50-61-115. Notice of violations.** (1) When a building is found that is not in compliance with fire safety rules promulgated by the department of justice, the person making the inspection or the department shall serve a written notice upon the party whose duty it is to maintain the safety of the building.

(2) The notice must specify the time within which the defective conditions must be remedied, ~~which may not be more than 90 days.~~

(3) The notice is served if delivered to the person to be notified, if left with any adult person at the usual residence or place of business of the person to be notified, or if deposited in the post office directed to the last-known address of the person to be notified. Whenever buildings are managed and controlled by a board of trustees, board of commissioners, or other governing body, the notice is served if delivered to the president, secretary, or treasurer of the board of trustees, board of commissioners, or other governing body."

{Internal References to 50-61-115: None.}

**Section 26.** Section 50-61-121, MCA, is amended to read:

**"50-61-121. Restrictions on storage of smokeless powder and small arms primers.** (1) A retail establishment may stock up to 400 pounds of smokeless powder on the premises of a building with a sprinkler system or 200 pounds on the

premises of a building without a sprinkler system if storage of this stock conforms to the following conditions:

(a) no more than 20 pounds are on display in a customer service area;

(b) the storage area is clearly posted as off limits to customers;

(c) the storage area is clearly posted prohibiting smoking or any open flame or sparks; and

(d) the storage area is a room designed and constructed to restrict smoke travel that is separate from the customer service area, that has a self-closing entrance door, and that conforms to one of the following:

(i) It is constructed of material sufficient to achieve a 1-hour fire resistant-rated barrier between the storage area and the customer service area. The smokeless powder must be stored in cabinets made of wood or equivalent material that is at least 1 inch thick, and each cabinet must contain no more than 200 pounds of smokeless powder. Cabinets must be separated by 25 feet.

(ii) It is protected by a fire suppression sprinkler system approved by the state fire prevention and investigation program section of the department of justice or a fire ~~marshal~~ of the local jurisdiction chief of a local governmental fire agency or the chief's designee, and the

storage area has cabinets as provided for in subsection (1)(d)(i).

(iii) Smokeless powder stock is contained in a cabinet with casters and constructed of wood at least 1 inch thick that is covered on all sides with 5/8-inch sheetrock.

(2) A retail establishment may stock up to 250,000 small arms primers if storage of this stock conforms to the following conditions:

(a) no more than 20,000 primers in a building with a sprinkler system or 10,000 primers in a building without a sprinkler system are on display in a customer service area;

(b) the storage area must conform to the conditions imposed in subsections (1)(a) through (1)(d), except that no more than 125,000 small arms primers may be stored in one cabinet, and the minimum required separation between cabinets is 15 feet; and

(c) small arms primers are retained in packaging approved by the U.S. department of transportation."

{Internal References to 50-61-121:  
50-61-102      50-61-120 }

**Section 27.** Section 50-62-101, MCA, is amended to read:

**"50-62-101. Entering of buildings for purpose of examination authorized. The officers An officer of the state fire prevention and investigation program section of the department of**

justice or the chief of the fire department of each municipality or district a local governmental fire agency or the chief's designee where a fire department agency is established at all reasonable hours may, as authorized by law, enter into all buildings and upon all premises within his the officer's, chief's, or designee's jurisdiction for the purpose of determining whether the building or premises conforms to laws and rules relating to fire hazards and fire safety."

{Internal References to 50-62-101:

50-62-102      50-62-102      50-62-103      50-62-104  
50-62-106      50-62-107      50-62-107 }

**Section 28.** Section 50-62-102, MCA, is amended to read:

**"50-62-102. Structures or conditions creating fire hazard a public nuisance -- order to remedy.** (1) If any building or other structure that for want of proper repair; by reason of age, dilapidated condition, defective or poorly installed wiring and equipment, defective chimneys, defective gas connections, defective heating apparatus, or the existence of any combustible materials, flammable conditions, or other fire hazards; or for any other cause or reason is especially liable to fire and is dangerous to the safety of the building premises or to the public or is so situated as to endanger other buildings and property in the vicinity, the The state fire prevention and investigation program section of the department of justice, an

officer of the section, or other officer person identified in 50-62-101 may declare the a building or other structure to be a public nuisance and proceed according to 50-62-103 or subsection (2) of this section if the state fire prevention and investigation section, officer of the section, or other person finds that the building or structure is especially susceptible to fire and is dangerous to the safety of the building premises or to the public, or is located in a way that a fire would endanger other buildings or property in the vicinity.

(2) If the state fire prevention and investigation program section, an officer of the program section, or an officer mentioned a person identified in 50-62-101 determines that a building or other structure constitutes a public nuisance for any reason identified in subsection (1), the department section, officer, or other officer person shall order the hazardous condition or material to be removed or remedied. The order must be in writing and directed generally to the owner, lessee, agent, or occupant of the building or structure.

(3) If the hazardous condition or material can be removed or remedied within a period of 24 hours, the order must contain notice that the condition or material must be remedied or removed. The owner, lessee, agent, or occupant upon whom the notice is served who fails to comply with the notice is liable for any expenses incurred in the

removal or remediying of the hazardous condition or material by the fire prevention and investigation program section, officer of the section, or other officer mentioned person identified in 50-62-101."

{Internal References to 50-62-102:

50-62-103 50-78-301 }

**Section 29.** Section 50-62-103, MCA, is amended to read:

**"50-62-103. Service of order to repair hazardous condition or demolish structure.** (1) If the fire prevention and investigation program section of the department of justice, an officer of the section, or any officer mentioned other person identified in 50-62-101, upon an examination or inspection, determines that a building or other structure constitutes a public nuisance for any reason identified in 50-62-102 and the condition cannot be removed or remedied within 24 hours, the program section, or officer, or person shall order the hazardous condition to be repaired or the structure to be torn down or demolished and all dangerous conditions remedied.

(2) The order shall must be in writing, shall recite must provide the grounds therefor for the order, and shall must be filed in the office of the clerk of the district court of the county in which the building or structure ordered to be altered, repaired, or demolished is situated, and thereupon all located. All further proceedings for the enforcement thereof shall be had in that court

of the order must be held in the district court in which the order is filed.

(3) A copy of the order filed as aforesaid provided in this section, together with a written notice that it has been filed and will be put in force unless the owner, occupant, or tenant shall file files objections or an answer to the order with the clerk of the court his objections or answer thereto within the time specified in 50-62-104, shall must be served upon the owner and any purchaser under contract for deed of the building or structure directed to be altered, repaired, or demolished. If there is a tenant occupying the building, service shall must also be made upon him the tenant. Service shall must be made personally upon the owner and occupant, if there is one, personally either within or without the state.

(4) If the whereabouts of the owner or any purchaser under contract for deed is unknown and cannot be ascertained by the department of justice by the exercise of reasonable diligence, then upon filing in the office of the clerk of the district court an affidavit to this effect, service of the notice upon the owner or any purchaser under contract for deed may be made by the clerk of the district court by publication of it once in each week for 3 successive weeks in a newspaper printed and published in the county in which the building or structure is located and by posting a copy thereof of the notice in a conspicuous place upon

the building or structure, and the service so made in this manner is complete upon the expiration of the publication period. Proof of service of the notice shall must be filed in the office of the clerk of the district court within 5 days after the service thereof of the notice."

{Internal References to 50-62-103:  
50-62-102 }

**Section 30.** Section 50-62-112, MCA, is amended to read:

**"50-62-112. Notice of violations.** (1) When the storage of class I or class II liquids, as defined in the uniform fire code adopted by the department of justice, in a tank on a farm or ranch is not in compliance with rules promulgated by the department of justice, the person making the inspection or the department shall serve a written warning notice upon the owner or operator of the tank.

(2) The notice must specify the violations found and the time within which the violations must be corrected. A penalty may not be imposed if the violation is corrected within the time period allowed."

{Internal References to 50-62-112: None.}

**Section 31.** Section 50-63-102, MCA, is amended to read:

**"50-63-102. Penalty Civil penalty for setting or leaving fire causing damage.** (1) Any A

person who shall upon any land within this state set or leave any sets or leaves fire that shall spread and damage or destroy spreads and damages or destroys property of any kind not his own shall upon conviction be punished by a fine belonging to the person is subject to a civil penalty of not less than \$10 \$50 or more than \$500. If such fire be set maliciously, whether on his own or on another's land, with intent to destroy property not his own, he shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for not less than 1 or more than 50 years.

(2) During the closed season, any person who shall kindle a campfire on land not his own in or dangerously near any forest material and leave same unquenched or who shall be a party thereto or who shall by throwing away any lighted cigar, cigarette, matches, or by the use of firearms or in any other manner start a fire in forest material not his own and leave same unquenched shall, upon conviction, be fined not less than \$10 or more than \$100 or be imprisoned in the county jail not exceeding 60 days."

{Internal References to 50-63-102: None.}

**Section 32.** Section 50-63-103, MCA, is amended to read:

**"50-63-103. Liability of offender for damages and costs.** Any A person who shall upon any land within this state, whether on his own or on

~~another's land, set sets or leave any leaves a fire that shall spread and damage or destroy spreads and damages or destroys property of any kind not his own shall be not belonging to the person is liable for all damages caused thereby by the fire, and any owner of property damaged or destroyed by such the fire may maintain a civil suit for the purpose of recovering such damages. Any A person who shall upon any land within this state, whether on his own or on another's land, set sets or leave any leaves a fire which that threatens to spread and damage or destroy property shall be is liable for all costs and expenses incurred, including, but not limited to, expenses incurred in investigation of the fire and administration of fire suppression, by the state of Montana, by any forestry association, or by any person extinguishing or preventing the spread of such the fire."~~

{Internal References to 50-63-103: None.}

**Section 33.** Section 50-63-202, MCA, is amended to read:

**"50-63-202. Fire chief or sheriff to conduct investigation.** If the fire occurs within a municipality, organized fire district, or fire service area, the chief of the governmental fire department agency having jurisdiction or the chief's designee shall make the investigation. If the fire occurs outside a municipality, organized fire district, or fire service area, the county

sheriff shall make the investigation or ensure that an investigation is completed."

{Internal References to 50-63-202: None.}

**Section 34.** Section 50-63-203, MCA, is amended to read:

**"50-63-203. Notification to department of justice -- reports to be filed.** (1) If it appears that a fire was of suspicious origin, if there was a loss of human life, or if it is determined that a criminal investigation is necessary, the official responsible for the investigation shall notify the department of justice and the appropriate law enforcement agency within 24 hours and shall file a written report of the cause with the department within 10 days.

(2) If the property was insured, as soon as any adjustment has been made, a person representing the insurance company shall notify the department of justice of the amount of adjustment and the apparent cause and circumstances of the fire.

(3) Each official responsible for investigating fires shall file a fire incident report on each fire with the department. Reports must be on forms and must contain information prescribed by the department. These reports must be sent to the department on a monthly basis or at intervals determined necessary by the department."

{Internal References to 50-63-203: None.}

**Section 35.** Section 50-63-401, MCA, is amended to read:

**"50-63-401. Insurer to provide information regarding fire loss to certain agencies upon request.** Each insurer engaged in issuing fire insurance policies in the state of Montana shall upon written request of any appropriate law enforcement or governmental fire protection agency release to the requesting agency all information in its possession relating to a fire loss of real or personal property. The information may include but is not limited to:

- (1) any insurance policy relevant to the fire loss under investigation and any application for such a policy;
- (2) premium payment records;
- (3) the history of previous claims made by the insured for fire loss;
- (4) material relating to the investigation of the loss, including statements of any person, proof of loss, and other relevant evidence."

{Internal References to 50-63-401:  
50-63-403      50-63-405 }

**Section 36.** Section 50-63-402, MCA, is amended to read:

**"50-63-402. Insurer to report suspicious fires.** Whenever an insurer has reason to believe that a fire loss in which it has an interest may be of other than accidental cause, it shall notify an appropriate law enforcement or governmental

fire protection agency and provide such the agency with all material developed from its inquiry into the fire loss."

{Internal References to 50-63-402:  
50-63-403      50-63-405 }

**Section 37.** Section 50-63-404, MCA, is amended to read:

**"50-63-404. Testimony of agency personnel in action to recover under insurance policy.** Law enforcement and governmental fire protection agency personnel may be required to testify as to any information in their possession regarding the fire loss of real or personal property in any civil action in which a person seeks recovery from an insurer under a policy for the fire loss."

{Internal References to 50-63-404: None.}

**Section 38.** Section 50-78-102, MCA, is amended to read:

**"50-78-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Chemical manufacturer" means an employer in codes 31 through 33, as defined in the North American Industry Classification System Manual, with a workplace where chemicals are produced for use or distribution.

(2) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the international union of pure and applied chemistry or the

chemical abstracts service rules of nomenclature or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(3) "Common name" means any designation or identification, such as code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(4) "Department" means the department of environmental quality provided for in Title 2, chapter 15, part 35.

(5) "Designated representative" means:

(a) the individual or organization to whom an employee gives written authorization to exercise the employee's rights under this chapter; or

(b) a recognized or certified collective bargaining agent who is automatically a designated representative without regard to written employee authorization.

(6) "Distributor" means a business, other than a chemical manufacturer, that supplies hazardous chemicals to other distributors or to employers.

(7) "Employee" means a person who may be exposed to hazardous chemicals in the workplace under normal operating conditions or possible emergencies.

(8) "Employer" means a person, firm, corporation, partnership, association, governmental agency, or other entity that is

engaged in business or providing services and that employs workers.

(9) "Exposure" means ingestion, inhalation, absorption, or other contact in the workplace with a hazardous chemical and includes potential, accidental, or possible exposure.

(10) "Hazardous chemical" means, except as provided in 50-78-103:

(a) any element, chemical compound, or mixture of elements or compounds that is a physical hazard or health hazard, as defined by subsection (c) of the OSHA standard, and that has been identified as such by the federal occupational safety and health administration or the manufacturer and has been filed with the federal occupational safety and health administration;

(b) any hazardous chemical, as defined by subsection (d)(3) of the OSHA standard; or

(c) any emitter of ionizing radiation.

(11) "Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

(12) "Local fire chief" means:

(a) the chief of the ~~municipal fire department or the chief's agent, for any workplace located within a city or town; or~~

(b) the county rural fire chief or the district rural fire chief or the chief's agent, for any workplace not located within a city or town local governmental fire agency as that term

is defined in [section 23] or the chief's designee.

(13) "Manufacturing employer" means an employer with a workplace classified in codes 31 through 33 of the North American Industry Classification System who manufactures, uses, or stores a hazardous chemical.

(14) "Material safety data sheet" means a document prepared in accordance with the requirements of the OSHA standard and containing chemical hazard and safe handling information.

(15) "Nonmanufacturing employer" means an employer with a workplace classified in a North American Industry Classification System code other than 31 through 33.

(16) "OSHA standard" means the hazard communication standard issued by the federal occupational safety and health administration, codified under 29 CFR 1910.1200, as that statute reads on January 1, 1985.

(17) "Trade secret" means a confidential formula, pattern, process, device, or information, including chemical name or other unique chemical identifier, that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors.

(18) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced, used, or stored and where employees are present.

(19) "Workplace" means an establishment at one geographical location containing one or more work areas.

(20) "Workplace chemical list" means the list of hazardous chemicals developed under this chapter or under subsection (e)(1)(i) of the OSHA standard."

{Internal References to 50-78-102: None.}

**Section 39.** Section 52-2-733, MCA, is amended to read:

**"52-2-733. Periodic visits to facilities by department -- investigations -- consultation with licensees and registrants.** (1) The department or its authorized representative shall make periodic visits to all licensed day-care centers to ensure that minimum standards are maintained.

(2) The department may investigate and inspect the conditions and qualifications of any day-care center, group day-care home, or family day-care home seeking or holding a license or registration certificate under the provisions of this part.

(3) The department shall visit and inspect at least 20% of all registered family day-care homes and group day-care homes in each of the governor's planning regions annually.

(4) The department shall make annual unannounced visits to day-care centers.

(5) Upon request of the department, the state fire prevention and investigation program

section of the department of justice shall inspect any day-care facility for which a license or registration certificate is applied for or issued and shall report its findings to the department.

(6) Upon request, the department shall give consultation to every licensee and registrant who desires to upgrade the services of the licensee's or registrant's program.

(7) This section may not be construed to require the department to conduct an inspection of each day-care facility applying for a registration certificate under the provisions of this part."

{Internal References to 52-2-733: None.}

**Section 40.** Section 52-2-734, MCA, is amended to read:

**"52-2-734. Fire safety -- certification required.** (1) The state fire prevention and investigation program section of the department of justice shall adopt and enforce rules for the protection of children in day-care centers from fire hazards and arrange for such any inspections and investigations as it considers necessary.

(2) Before a license can be issued to operate a day-care center, each applicant shall submit to the department a certificate of approval from the state fire prevention and investigation program section of the department of justice indicating that fire safety rules have been met."

{Internal References to 52-2-734:  
52-2-724 }

**Section 41.** Section 52-4-205, MCA, is amended to read:

**"52-4-205. Rulemaking.** (1) The department shall, for the purpose of licensing, adopt rules to govern administration, operation, and health and safety requirements for community homes for persons with severe disabilities in order to protect rights of residents. The department shall provide for temporary and provisional licensing.

(2) The state fire prevention and investigation program section of the department of justice shall provide advice and recommendations to the department concerning licensing requirements for health and safety."

{Internal References to 52-4-205:  
52-4-201      52-4-202      53-19-102 }

**Section 42.** Section 53-20-307, MCA, is amended to read:

**"53-20-307. Health and safety standards for licensing.** (1) (a) After initial certification by the state fire prevention and investigation program section of the department of justice, community homes must be certified annually for fire and life safety by the department of justice.

(b) The department of justice shall notify the department of public health and human services when a community home has been certified.

(2) (a) Local health officers shall certify community homes for compliance with health and safety standards. If for any reason the local

authority cannot complete the certification in a timely manner, the department of public health and human services is authorized to make the determination on certification.

(b) A reasonable fee may be charged to authorized parties as defined in 53-20-303 for the health and safety certification."

{Internal References to 53-20-307: None.}

**Section 43.** Section 61-8-102, MCA, is amended to read:

**"61-8-102. Uniformity of interpretation -- definitions.** (1) Interpretation of this chapter in this state must be as consistent as possible with the interpretation of similar laws in other states.

(2) As used in this chapter, unless the context requires otherwise, the following definitions apply:

(a) "Authorized emergency vehicle" means a vehicle of ~~the fire department or fire patrol~~ a governmental fire agency as that term is defined in [section 23], an ambulance, and an emergency vehicle designated or authorized by the department.

(b) "Bicycle" means:

(i) a vehicle propelled solely by human power upon which any person may ride and that has two tandem wheels and a seat height of more than 25 inches from the ground when the seat is raised

to its highest position, except scooters and similar devices; or

(ii) a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, and an independent power source providing a maximum of 2 brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement may not exceed 3.05 cubic inches (50 centimeters) regardless of the number of chambers in the power source. The power source may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour (48.28 kilometers an hour) on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.

(c) "Business district" means the territory contiguous to and including a highway when within any 600 feet along a highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings that occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

(d) "Controlled-access highway" means a highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway, street, or roadway except at the

points and in the manner as determined by the public authority having jurisdiction over the highway, street, or roadway.

(e) "Crosswalk" means:

(i) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway;

(ii) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface.

(f) "Flag person" means a person who directs, controls, or alters the normal flow of vehicular traffic upon a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising the officer's duty as a result of a planned vehicular traffic hazard, must be equipped as required by the rules of the department of transportation.

(g) "Highway" has the meaning provided in 61-1-101, but includes ways that have been or are later dedicated to public use.

(h) "Ignition interlock device" means ignition equipment that:

(i) analyzes the breath to determine blood alcohol concentration;

(ii) is approved by the department pursuant to 61-8-441; and

(iii) is designed to prevent a motor vehicle from being operated by a person who has consumed a specific amount of an alcoholic beverage.

(i) (i) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines or if there are no curb lines then the lateral boundary lines of the roadways of two highways that join one another at or approximately at right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(ii) When a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway must be regarded as a separate intersection. If the intersecting highways also include two roadways 30 feet or more apart, then every crossing of two roadways of the highways must be regarded as a separate intersection.

(j) "Local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

(k) "Noncommercial motor vehicle" or "noncommercial vehicle" means any motor vehicle or combination of motor vehicles that is not included in the definition of commercial motor vehicle in

61-1-101 and includes but is not limited to the vehicles listed in 61-1-101(7)(b).

(l) "Official traffic control devices" means all signs, signals, markings, and devices not inconsistent with this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(m) "Pedestrian" means any person on foot or any person in a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(n) "Police vehicle" means a vehicle used in the service of any law enforcement agency.

(o) "Private road" or "driveway" means a way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(p) "Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of 300 feet or more is primarily improved with residences or residences and buildings in use for business.

(q) "Right-of-way" means the privilege of the immediate use of the roadway.

(r) "School bus" has the meaning provided in 20-10-101.

(s) "Sidewalk" means that portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for use by pedestrians.

(t) "Traffic control signal" means a device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(u) "Urban district" means the territory contiguous to and including any street that is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-fourth mile or more."

{Internal References to 61-8-102:			
15-6-219	33-23-204	45-5-205	61-1-101
61-1-101	61-1-101	61-8-380	61-8-605
61-9-102	61-9-102	61-9-102	61-9-103
61-9-402	61-9-406	61-9-415	61-10-123
61-12-101	61-12-101	{ }	

**Section 44.** Section 61-8-364, MCA, is amended to read:

**"61-8-364. Crossing firehose.** A vehicle may not be operated over an unprotected hose of a governmental fire department agency, as that term is defined in [section 23], when the hose is laid down on any roadway, private road, or private driveway, to be used at any fire or alarm of fire, without the consent of the ~~fire department agency~~ official in command."

{Internal References to 61-8-364: None.}
--

**Section 45.** Section 61-9-402, MCA, is amended to read:

**"61-9-402. Audible and visual signals on police, emergency vehicles, and on-scene command vehicles -- immunity.** (1) A police vehicle must be equipped with a siren capable of giving an audible signal and may be equipped with alternately flashing or rotating red or blue lights as specified in this section.

(2) An authorized emergency vehicle must be equipped:

(a) with a siren and an alternately flashing or rotating red light as specified in this section; and

(b) with signal lamps mounted as high and as widely spaced laterally as practicable that are capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight.

(3) A bus used for the transportation of school children must be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two red and two amber alternating flashing lights and to the rear two red and two amber alternating flashing lights. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. The warning lights must be as prescribed

by the board of public education and approved by the department.

(4) A police vehicle and an authorized emergency vehicle may, and an emergency service vehicle must, be equipped with alternately flashing or rotating amber lights as specified in this section.

(5) The use of signal equipment as described in this section imposes upon the operators of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light only with caution and at a speed that is no greater than is reasonable and proper under the conditions existing at the point of operation subject to the provisions of 61-8-209 and 61-8-303.

(6) An employee, agent, or representative of the state or a political subdivision of the state or of a governmental fire department agency who is operating a police vehicle, an authorized emergency vehicle, or an emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in response to any other hazard on the roadway that presents an immediate hazard or an emergency or life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries, costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of subsection (5).

(7) Blue, red, and amber lights required in this section must be mounted as high as and as widely spaced laterally as practicable and capable of displaying to the front two alternately flashing lights of the specified color located at the same level and to the rear two alternately flashing lights of the specified color located at the same level or one rotating light of the specified color, mounted as high as is practicable and visible from both the front and the rear. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. Except as provided in 61-9-204(6), only police vehicles as defined in 61-8-102 may display blue lights, lenses, or globes.

(8) A police vehicle and authorized emergency vehicle may be equipped with a flashing signal lamp that is green in color, visible from 360 degrees, and attached to the exterior roof of the vehicle for purposes of designation as the on-scene command and control vehicle in an emergency or disaster. The green light must have sufficient intensity to be visible at 500 feet in normal sunlight. Only the on-scene command and control vehicle may display green lights, lenses, or globes.

(9) Only a police vehicle or an authorized emergency vehicle may be equipped with the means to flash or alternate its headlamps or its backup lights.

(10) A violation of subsection (5) is considered reckless endangerment of a highway worker, as provided in 61-8-301(4), and is punishable as provided in 61-8-715."

{Internal References to 61-9-402:

20-10-111	61-1-101	61-8-107	61-8-301
61-8-346	61-8-351	61-8-351	61-8-351
61-8-515	61-9-416	61-9-416	}

**Section 46.** Section 75-10-725, MCA, is amended to read:

**"75-10-725. Immunity of volunteer fire company or department and employees for hazardous or deleterious substance cleanup.** A ~~volunteer fire company or department that is organized by a municipality, county, rural fire district, fire service area, or other entity governmental fire agency, as that term is defined in [section 23],~~ and the employees of the ~~company or department agency~~ are not liable for civil damages, except damages for gross negligence or willful or wanton misconduct, for their acts or omissions that are directly related to the hazardous material incident."

{Internal References to 75-10-725: None.}

**NEW SECTION. Section 47. {standard}**

**Codification instruction.** [Section 23] is intended to be codified as an integral part of Title 50, chapter 61, part 1, and the provisions of Title 50, chapter 61, part 1, apply to [section 23].

- END -

{Name : Leanne M. Kurtz  
Title : Research Analyst  
Agency : Legislative Services Division  
Phone : 444-3064  
E-Mail : lekurtz@state.mt.us}

## Appendix D

LC2001

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

### HJR 10 PROPOSED BILL #2

A Bill for an Act entitled: "An Act allowing the department of natural resources and conservation and a board of county commissioners to restrict activity on wildland areas where there exists a high fire hazard; clarifying the governor's authority to close areas to access upon a declaration of an emergency or disaster related to fire danger; prohibiting a person from accessing land that is closed and providing for a permit process under certain circumstances; clarifying the authority of the presiding officer of a board of county commissioners to close areas to access upon a declaration of an emergency or disaster; clarifying that when the governor or a presiding officer of a board of county commissioners closes an area to access, that area is also closed to hunting and fishing; and amending sections 10-3-104, 10-3-406, and 87-3-106, MCA."

Be it enacted by the Legislature of the State of Montana:

#### NEW SECTION. Section 1. Activity

**restrictions in high fire hazard area.** The department may designate areas on state and private lands as high fire hazard areas and may require all persons, firms, or corporations present or engaged in any activity in the high fire hazard areas to cease operations or activities or to adjust working hours to less critical periods of the day.

#### NEW SECTION. Section 2. Wildland closure.

(1) A person may not access a wildland area designated as closed to access by a governor's proclamation of an emergency or disaster issued under Title 10, chapter 3, parts 1 through 3 except under a written permit issued by a recognized agency.

(2) Permits to enter upon closed areas may be issued by a recognized agency upon a showing of real need by the applicant. Permits may be issued to individuals having actual residence as a permanent or principal place of abode in the designated areas or to individuals engaged in employment that does not present a fire hazard.

(3) A permit is not required of individuals engaged in firefighting, fire prevention, or law enforcement or who are engaged in official business.

**NEW SECTION. Section 3. Activity**

**restrictions in high fire hazard area.** (1) A board of county commissioners may designate areas on private land or on land that is not under the jurisdiction of a municipality or a state or federal agency as high fire hazard areas.

(2) Except as provided in 87-3-106(2), in designated high fire hazard areas, the board may require all persons, firms, or corporations present or engaged in any activity in those areas to cease activity or operations or to adjust working hours to less critical periods of the day.

(3) The presiding officer of the board may control ingress and egress into a high fire hazard area if an emergency or disaster is declared under the provisions of Title 10, chapter 3, part 4.

**Section 4.** Section 10-3-104, MCA, is amended to read:

**"10-3-104. General authority of governor.**

(1) The governor is responsible for carrying out parts 1 through ~~4~~ 3 of this chapter.

(2) In addition to any other powers conferred upon the governor by law, the governor may:

(a) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with

the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

(b) direct and compel the evacuation of all or part of the population from an emergency or disaster area within the state if the governor considers this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(c) control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area.

(3) Under this section, the governor may issue executive orders, proclamations, and regulations and amend and rescind them. All executive orders or proclamations declaring or terminating a state of emergency or disaster must indicate the nature of the emergency or disaster, the area threatened, and the conditions that have brought about the declaration or that make possible termination of the state of emergency or disaster.

(4) The authority to control ingress and egress as provided in subsection (2)(c) includes the authority to close wildland areas to access during periods of extreme fire danger. Upon closure of wildland areas, the provisions of [section 2] apply."

{Internal References to 10-3-104: None.}

**Section 5.** Section 10-3-406, MCA, is amended to read:

**"10-3-406. Authority of principal executive officer.** (1) Upon the declaration of an emergency or disaster under 10-3-402 or 10-3-403 and the issuance of an order as required by 10-3-404, the principal executive officer may:

(1) (a) direct and compel the evacuation of all or part of the population from an incident or emergency or disaster area within that political subdivision when necessary for the preservation of life or other disaster mitigation, response, or recovery; and

(2) (b) control the ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises therein in the area.

(2) The authority to control ingress and egress as provided in subsection (1)(b) includes the authority to close wildland areas to access during periods of extreme fire danger."

{Internal References to 10-3-406: None.}

**Section 6.** Section 87-3-106, MCA, is amended to read:

**"87-3-106. Hunting and fishing prohibited in fire-danger areas.** (1) When the fire danger becomes so extreme that the governor, upon the advice and recommendation of the department of natural resources and conservation, closes an

area to trespass because of fire danger, that area is declares an emergency or a disaster under Title 10, chapter 3, parts 1 through 3 or the presiding officer of a board of county commissioners declares an emergency or a disaster under Title 10, chapter 3, part 4 that is related to extreme fire danger and closes areas to access, those areas are automatically closed to hunting or fishing and remains remain closed while the fire closure remains in effect.

(2) A board of county commissioners may initiate a request for a closure by that hunting and fishing be restricted in an area that has not been closed to access but that the board considers to be a high fire hazard area by submitting the request to the department. However, the department may adopt reasonable rules specifying the fire prevention and suppression measures that must have been taken by the board before a request may be submitted and considered."

{Internal References to 87-3-106: None.}

**NEW SECTION. Section 7. {standard}**

**Codification instruction.** (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 76, chapter 13, part 1, and the provisions of Title 76, chapter 13, part 1, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 7, chapter 33, part

22, and the provisions of Title 7, chapter 33,  
part 22, apply to [section 3].

- END -

{Name : Leanne M. Kurtz  
Title : Research Analyst  
Agency : Legislative Services Division  
Phone : 444-3064  
E-Mail : lekurtz@state.mt.us}

## Appendix E

LC2002

\*\*\*\* Bill No. \*\*\*\*  
Introduced By \*\*\*\*\*  
By Request of the \*\*\*\*\*

### HJR 10 PROPOSED BILL #3

A Bill for an Act entitled: "An Act generally revising wildfire protection laws; establishing a state fire policy; providing definitions for "wildfire", "wildfire season", and "wildland"; consolidating and clarifying the authority of the department of natural resources and conservation; requiring the department to appoint firewardens and to prescribe duties for firewardens; providing that firewardens are not criminally liable under certain circumstances; removing provisions requiring the county to list forest lands with the department; clarifying that a permit is not needed to ignite certain recreational fires during wildfire season; revising penalties for failure to comply with burning permits, failure to extinguish recreational fires, and throwing lighted material; extending to all wildlands certain provisions that previously only applied to forest lands; imposing upon owners of all lands the duty to protect the land from wildfire; revising the date by which the department of natural resources and conservation shall certify to the department

of revenue the names of owners of forest lands; amending sections 76-13-101, 76-13-102, 76-13-103, 76-13-104, 76-13-105, 76-13-110, 76-13-121, 76-13-122, 76-13-123, 76-13-124, 76-13-125, 76-13-126, 76-13-201, 76-13-202, 76-13-203, 76-13-204, 76-13-205, 76-13-206, 76-13-207, 76-13-208, 76-13-209, 76-13-210, 76-13-211, and 77-5-103, MCA; repealing sections 76-11-101, 76-11-102, 76-13-106, 76-13-109, 77-5-104, 77-5-105, and 77-5-106, MCA."

Be it enacted by the Legislature of the State of Montana:

**NEW SECTION. Section 1. State fire policy.**

The legislature finds and declares that:

(1) The safety of the public and of firefighters is paramount in all wildfire suppression activities.

(2) It is a priority to minimize property and resource loss resulting from wildfire and to minimize expense to Montana taxpayers, which is generally accomplished through an aggressive and rapid initial attack effort.

(3) Interagency cooperation and coordination among local, state, and federal agencies is intended and encouraged, including cooperation when restricting activity or closing areas to access becomes necessary.

(4) Fire prevention, hazard reduction, and loss mitigation are fundamental components of this wildfire policy.

(5) All property in Montana has wildfire protection from a recognized fire protection entity.

(6) All private property owners and federal and state public land management agencies have a responsibility to manage resources, mitigate fire hazards, and otherwise prevent fires on their property.

(7) Sound forest management activities to reduce fire risk--such as thinning, prescribed burning, and insect and disease treatments--improve the overall diversity and vigor of forested landscapes and improve the condition of related water, wildlife, recreation, and aesthetic resources.

(8) Development of fire protection guidelines for the wildland-urban interface is critical to improving public safety and for reducing risk and loss.

**Section 2.** Section 76-13-101, MCA, is amended to read:

**"76-13-101. Purpose.** (1) It is the purpose of this part and part 2 to provide for the protection and conservation of ~~forest~~ natural resources, range, and water; the regulation of streamflow; and the prevention of soil erosion. It is further the purpose of this part and part 2

to more adequately promote and facilitate the cooperation, financial and otherwise, between the state and public and private agencies which are associated in such work.

(2) To achieve the conservation of ~~forest~~ natural and watershed resources, the legislature encourages the use of best management practices in timber sale planning, associated road construction and reconstruction, timber harvesting, site preparation, and related activities and establishes a process to ensure that information on best management practices is provided to owners and operators engaged in forest practices on private land."

{Internal References to 76-13-101: None.}

**Section 3.** Section 76-13-102, MCA, is amended to read:

**"76-13-102. Definitions.** Unless the context requires otherwise, in part 2 and this part, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.

(2) "Conservation" means the protection and wise use of forest, ~~forest~~ range, ~~forest~~ water, and ~~forest~~ soil resources in keeping with the common welfare of the people of this state.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) (3) "Forest fire" means a fire burning uncontrolled on forest lands.

(5) ~~"Forest fire protection"~~ means the work of prevention, detection, and suppression of forest fires and includes training required to perform those functions.

~~(6) "Forest fire protection district"~~ means a definite forest land area, the boundaries of which are fixed and in which forest fire protection is provided through the medium of an agency recognized by the department.

~~(7) "Forest fire season"~~ means the period of each year beginning May 1 and ending September 30, inclusive.

~~(8)(4)~~ "Forest land" means land that has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.

~~(9)(5)~~ (a) "Forest practices" means the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and the management of logging slash.

(b) The term does not include activities for the purpose of:

(i) the operation of a nursery or Christmas tree farm;

(ii) the harvest of Christmas trees;

(iii) the harvest of firewood; or

(iv) the cutting of trees for personal use by an owner or operator.

~~(10)(6)~~ "Lands" for conservation purposes means all forest lands within this state that are officially classified by the department as forest lands under 76-13-107.

~~(11)(7)~~ "Operator" means a person responsible for conducting forest practices. An operator may be the owner, the owner's agent, or a person who, through contractual agreement with the landowner, is obligated to or entitled to conduct forest practices or to carry out a timber sale.

~~(12)(8)~~ "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

~~(13)(9)~~ "Person" means an individual, corporation, partnership, or association of any kind.

~~(14)(10)~~ "Recognized agency" means an agency organized for the purpose of providing ~~forest~~ fire protection and recognized by the department as giving adequate fire protection to ~~forest~~ lands in accordance with rules adopted by the department.

(15) (11) "Timber sale" means a series of forest practices designed to access, harvest, and regenerate trees on a defined land area.

(12) "Wildfire" means an unplanned, unwanted fire burning uncontrolled on wildland and consuming vegetative fuels.

(13) "Wildfire season" means the period of each year beginning May 1 and ending September 30, inclusive.

(14) "Wildland" means an area in which development is essentially non-existent, except for roads, railroads, powerlines, and similar facilities, and in which structures, if any, are widely scattered.

(15) "Wildland fire protection" means the work of prevention, detection, and suppression of wildland fires and includes training required to perform those functions.

(16) "Wildland fire protection district" means a definite land area, the boundaries of which are fixed and in which wildland fire protection is provided through the medium of an agency recognized by the department.

(17) "Wildland-urban interface" means the line, area, or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels."

{Internal References to 76-13-102:  
76-13-103      76-13-203 }

**Section 4.** Section 76-13-103, MCA, is amended to read:

**"76-13-103. Applicability.** This part and part 2 apply to all ~~forest state and private~~ lands within this state that are officially ~~classified by the department as forest lands~~ according to the definition of forest land in 76-13-102 ~~susceptible to wildfire, as determined by the department.~~"

{Internal References to 76-13-103: None.}

**Section 5.** Section 76-13-104, MCA, is amended to read:

**"76-13-104. Functions of department -- rulemaking.** (1) The department has the duty to ensure the protection of land under state and private ownership and to suppress wildfires on land under state and private ownership.

(2) (a) The department shall adopt rules to protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for that purpose, in emergencies, may employ personnel and incur other expenses when necessary.

(b) The department may adopt and enforce reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of this part and part 2.

(3) The duty imposed on the department under this section is not exclusive to the department and does not absolve private property owners or

governmental fire agencies from any fire protection or suppression responsibilities.

(1)(4) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and forest fire protection.

(2)(5) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(6) The department shall establish and maintain wildland fire control training programs.

(3) ~~The department shall require an owner or operator to provide a notification prior to conducting forest practices as provided in 76-13-131, shall adapt as necessary any procedure used for notification with respect to an agreement under 76-13-408 to ensure that the operator provides information on the location of the forest practices in relation to watershed features, and shall conduct onsite consultations as provided for in 76-13-132.~~

(7) The department shall appoint firewardens in the number and localities that it considers necessary and shall adopt rules prescribing the qualifications and duties of firewardens."

{Internal References to 76-13-104: None.}

NEW SECTION. Section 6. Duties of firewarden -- liability. (1) In addition to the

duties prescribed by rule pursuant to 76-13-104(7), a firewarden appointed by the department shall promptly report all fires to the department, take immediate and active steps toward their extinguishment, report any violation of the provisions of Title 76, chapter 13, parts 1 and 2, and assist in apprehending and convicting offenders.

(2) A firewarden is not liable for civil action for trespass committed in the discharge of the firewarden's duties.

(3) A firewarden is not criminally liable for acts that are committed within the course and scope of employment, as provided in Title 2, chapter 9.

(4) A firewarden who has information that shows, with reasonable certainty, that a person has violated any provision of Title 76, chapter 13, parts 1 and 2 shall immediately take action against the offender by making complaint before the appropriate authority or by providing information to the appropriate county attorney and shall obtain all possible evidence pertaining to the violation.

**Section 7.** Section 76-13-105, MCA, is amended to read:

**"76-13-105. Protection of nonforest lands and improvements from fire.** (1) Nonforest lands and improvements may be protected by the

department when requested by the landowner at rates determined by the department.

(2) Land classified as forest land under 76-13-107 within a wildland fire protection district as provided in 76-13-204, or otherwise under contract for fire protection by a recognized agency, must be protected as provided in 76-13-201 and 76-13-207.

(3) Private and public land, whether classified as forest land or otherwise, that is not within a wildland fire protection district or under the protection of a recognized agency or a municipality must be protected by a county as provided in 7-33-2202. The county governing body shall either provide direct protection as provided in 7-33-2202(3) or it shall enter into an agreement with a recognized agency."

{Internal References to 76-13-105: None.}

**NEW SECTION. Section 8. [Formerly 76-11-102] Cooperative agreements with owners and lessees of land for fire protection and conservation.** (1) For the purpose of more adequately promoting and facilitating cooperation, financial and otherwise, between the state and all of the public and private agencies, the department may cooperate with owners or lessees of farm, range, forest, watershed, or other uncultivated lands in private and public ownership for the protection from fire of the cultivated agricultural crops or natural

resources existing or growing on the land and also in the conservation and perpetuation of the lands and resources, including the prevention of soil erosion and the regulation of stream flow.

(2) The state treasurer may receive money that may be appropriated or allotted for the purposes listed in subsection (1) by the state, counties, municipalities, the United States government or any department of the federal government, or other organization or individual.

**Section 9.** Section 76-13-110, MCA, is amended to read:

**"76-13-110. Owner's right to board hearing.**

(1) An owner of forest land is entitled to a hearing before the board department, after a request therefor for a hearing, on any subject pertaining to the activities of the board, the department; or any recognized agency as agent of the department affecting the owner's property. A request for a hearing before the board department may not have the effect of suspending the operations of the board, the department; or any agent of the department undertaken pursuant to this chapter, but upon the hearing, the board department may terminate those operations if found unreasonable.

(2) A hearing pertaining to costs charged against the forest land of an owner for protection thereof, as provided in 76-13-201,

must be requested on or before August 15 each year."

{Internal References to 76-13-110: None.}

**Section 10.** Section 76-13-121, MCA, is amended to read:

**"76-13-121. Permit for burning required.**

(1) During the ~~forest fire~~ wildfire season or an expansion ~~thereof~~ of the season, a person may not ignite or set a forest fire, including a slash-burning fire, land-clearing fire, debris-burning fire, or, except as provided in subsection (2), an open fire within ~~forest lands~~ without an official written permit to ignite or set the fire from the recognized protection agency for that protection area. A permit may not be issued for an area where a special burning restriction in a high fire hazard area has been imposed by a county governing body under [Section 3, LC2001] or by the department under [Section 1, LC2001].

(2)(a) ~~A permit is not required in order to build, set, or ignite a campfire within and upon a designated improved camping ground or upon a plot of land from which all vegetable and inflammable matter and debris have been removed to a point where it may not become ignited by the campfire or by sparks therefrom If no restrictions are in place, a permit is not needed for recreational fires measuring less than 48 inches in diameter that are surrounded by a~~

nonflammable structure and for which a suitable source of extinguishing the fire is available  
[\*\*From 7-33-2205\*\*].

(b) A recreational fire may not be ignited if special restrictions prohibiting recreational fires have been established by an authority having jurisdiction.

{Internal References to 76-13-121:  
76-13-123 }

**Section 11.** Section 76-13-122, MCA, is amended to read:

**"76-13-122. Failure to comply with permit.**

~~A person to whom a written permit is issued to set or ignite a fire within forest lands during the forest protection season shall comply strictly with the permit. A person who fails to comply with the permit, leaves the fire unattended, leaves the fire before it is totally extinguished, or negligently allows the fire to spread from or beyond the burning area defined by the permit is guilty of a misdemeanor subject to the penalty provided in 50-63-102 and is subject to the provisions of 50-63-103. The department shall prescribe the form and substance of such the permit.~~

{Internal References to 76-13-122: None.}

**Section 12.** Section 76-13-123, MCA, is amended to read:

**"76-13-123. Failure to extinguish campfire recreational fire.** Any A person who shall fail fails to extinguish any campfire a recreational fire that the person has set or ignited by him within any forest lands before leaving the same, who shall fail to extinguish any campfire used by him or left in his charge before leaving the same, or in which the person has been left in charge or who shall negligently allow such allows the fire to spread from the plot described in 76-13-121 shall be guilty of a misdemeanor is subject to the penalty provided in 50-63-102 and is subject to the provisions of 50-63-103."

{Internal References to 76-13-123: None.}

**Section 13.** Section 76-13-124, MCA, is amended to read:

**"76-13-124. Throwing lighted materials.** A person who throws or places any lighted cigarette, cigar, ashes, or other material or flaming or glowing substance that may start a fire in or near any forest material is guilty of a misdemeanor subject to the penalty provided in 50-63-102 and is subject to the provisions of 50-63-103."

{Internal References to 76-13-124: None.}

**Section 14.** Section 76-13-125, MCA, is amended to read:

**"76-13-125. Spark arresters required.** No A person may not use, drive, or operate within any

forest lands wildland any internal combustion engine that is not equipped with a modern, efficient, and adequate spark arrester and with modern, efficient devices to prevent the escape of sparks, coals, cinders, and other burning material from the exhaust of any such the engine."

{Internal References to 76-13-125: None.}

**Section 15.** Section 76-13-126, MCA, is amended to read:

**"76-13-126. Restrictions on sawdust piles mill waste.** (1) Before each forest fire season, all All persons, firms, or corporations creating or responsible for mill waste within the forest areas shall treat, dispose of, remove, or reduce the hazards created so that the accumulation of sawmilling the waste does not constitute a fire hazard.

(2) A sawmill located within or contiguous to forest lands may not accumulate in one pile sawdust in excess of an amount resulting from the sawing of 500,000 feet log scale of sawlogs. However, a larger sawdust pile may be accumulated when there is no reasonable danger of fire therefrom and a permit for the additional accumulation is granted by the department. If burning is the disposal method elected, each sawdust pile so accumulated shall be prepared for burning by cribbing the base of each pile with

~~slabs and burned in accordance with rules adopted by the department."~~

{Internal References to 76-13-126: None.}

**NEW SECTION.** **Section 16. Duty of owner to protect against fire.** (1) A owner of land shall protect against the starting or existence of fire and shall suppress the spread of fire on that land. This protection and suppression must be in conformity with reasonable rules and standards for adequate fire protection adopted by the department.

(2) (a) The provisions of 76-13-201 apply to an owner of land that is classified as forest land under 76-13-107 and that is within a wildland fire protection district.

(b) If an owner of land does not provide for protection against the starting or existence of fire and for fire suppression and the land does not meet the criteria in subsection (2)(a), the owner may request that the department provide protection as provided in 76-13-105.

**Section 17.** Section 76-13-201, MCA, is amended to read:

**"76-13-201. Duty of owner to protect Costs for protection against fire.** (1) An owner of land classified as forest land by the department shall protect against the starting or existence and suppress the spread of fire on that land. This protection and suppression must be in conformity

with reasonable rules and standards for adequate fire protection adopted by the department.

(2) (1) ~~If the An owner of land that is classified as forest land within a wildland fire protection district or that is otherwise under contract for fire protection by a recognized agency does not provide for the protection and suppression, the is subject to the fees for fire protection provided in this section.~~

(2) ~~The department may shall provide it fire protection to the land described in subsection (1) at a cost to the landowner of not more than \$30 for each landowner in the protection district and of not more than an additional 20 cents per acre per year for each acre in excess of 20 acres owned by each landowner in each protection district, as necessary to yield the amount of money provided for in 76-13-207. The owner of the land shall pay the charge approved by the department in accordance with part 1 and this part to the department of revenue. Payments to the department of revenue are due on or before November 30 of each year Assessment, payment, and collection of the fire protection costs must be made in accordance with 76-13-207.~~

(3) (2) ~~Other charges may not be assessed to a participating landowner except in cases of proven negligence on the part of the landowner or the landowner's agent or in the event of a violation of 50-63-102 or 50-63-103.~~"

{Internal References to 76-13-201:

**Section 18.** Section 76-13-202, MCA, is amended to read:

**"76-13-202. Means by which department may provide protection.** The department may provide for ~~forest fire~~ wildfire protection of any ~~forest lands~~ wildlands through the department or by contract or any other feasible means, in cooperation with any federal, state, or other recognized agency."

{Internal References to 76-13-202: None.}

**Section 19.** Section 76-13-203, MCA, is amended to read:

**"76-13-203. Extension of the forest fire wildfire season.** In the event of excessive or great fire danger, the period defined in 76-13-102~~(7)~~(13) may be expanded when in the judgment of the department dangerous fire conditions exist. When expanded, the department shall give public notice."

{Internal References to 76-13-203: None.}

**Section 20.** Section 76-13-204, MCA, is amended to read:

**"76-13-204. Creation, annexation of land into, and dissolution of forest wildland fire protection districts.** (1) In accordance with the provisions of subsections (2) and (3), the

department may create, annex land to, or dissolve forest wildland fire protection districts.

(2) Before a district is created, land is annexed into a district, or a district is dissolved, the department shall hold a hearing in any county in which land affected by the proposed change is located.

(a) The department shall give notice at least 20 days in advance of the hearing to all property owners to be affected by the proposed change. Service of the notice may be made by certified mail to each affected property owner or by publication of the notice in a newspaper published or generally circulated in the county in which the hearing is to be held.

(b) The department shall consider the arguments made for and against the proposed change in making a determination under this section.

(3) (a) A ~~forest~~ wildland fire protection district may not be created or dissolved unless approved in writing by a vote of not less than 51% of the owners representing at least 51% of the acreage to be involved in the affected ~~forest~~ wildland fire protection district.

(b) Land may not be annexed into a district unless approved by 51% of the owners representing at least 51% of the acreage to be annexed.

(4) Land annexed into a district may not be removed from that district unless that district is dissolved."

{Internal References to 76-13-204: None.}

**Section 21.** Section 76-13-205, MCA, is amended to read:

**"76-13-205. Determination of boundaries of district.** In establishing boundaries of organized forest wildland fire protection districts ~~covering forest lands~~, the department may for the purpose of administrative convenience designate recognizable landmarks as boundaries."

{Internal References to 76-13-205: None.}

**Section 22.** Section 76-13-206, MCA, is amended to read:

**"76-13-206. What constitutes compliance with duty to protect against fire for landowners within district.** An owner of forest lands land within an organized forest wildland fire protection district while a member of or while participating in a recognized agency for forest wildland fire protection or within areas protected by a county shall be considered to have fully complied with the requirements of 76-13-201 [section 16]."

{Internal References to 76-13-206: None.}

**Section 23.** Section 76-13-207, MCA, is amended to read:

**"76-13-207. Determination and collection of costs of fire protection.** (1) The department shall prepare an annual operation assessment plan

in which fire protection costs are determined. The department shall request the legislature to appropriate the state's portion of the cost. After the appropriation is made by the legislature, the department shall cause an assessment to be made on the owners of ~~classified~~ forest land, as specified in 76-13-201 and 76-13-105, sufficient to bring the total amount received from the landowners to no greater than one-third of the amount specified in the appropriation.

(2) On or before the ~~second Tuesday in August first Tuesday in September~~ of each year, the department shall certify in writing to the department of revenue the names of these owners of forest lands in each county, together with a description of their lands and a statement of the amount found to be due and owing by each of the owners to the department for forest wildland fire protection.

(3) Upon receiving the certificate from the department showing the amount due, the department of revenue shall extend the amounts upon the county tax rolls covering the lands, and the sums become obligations of the owner, to be paid and collected in the same manner and at the same time and subject to the same penalties as general state and county taxes upon the same property are collected."

{Internal References to 76-13-207:  
76-13-201      76-13-209 }

**Section 24.** Section 76-13-208, MCA, is amended to read:

**"76-13-208. Nature of assessments for forest wildland fire protection.** All payments required of owners of forest lands landowners by this part and part 1 are assessments for benefits actually received by those owners in the protection of their lands and are not a tax upon the property of such the owners."

{Internal References to 76-13-208: None.}

**Section 25.** Section 76-13-209, MCA, is amended to read:

**"76-13-209. Disposition of assessments.** All sums Money collected by the county treasurer pursuant to 76-13-207 shall must be promptly deposited remitted to the state for deposit in the state special revenue fund."

{Internal References to 76-13-209: None.}

**Section 26.** Section 76-13-210, MCA, is amended to read:

**"76-13-210. Payment under protest.** An owner who is required to pay to the county treasurer any sum for forest wildland fire protection as required by this part or part 1 and who contends that he the owner is not legally obligated to pay the sum or some part thereof of the sum shall pay it to the county treasurer under written protest stating the reasons for the protest. The payment under protest and all proceedings subsequent

thereto shall to the payment must be in conformity with the law of this state providing for the payment of taxes under protest and action to recover the same payment. In the hearing and determination of any action to recover the payment under protest, all questions of the legality and reasonableness of the proceedings of the board and the department may be reviewed and decided."

{Internal References to 76-13-210: None.}

**Section 27.** Section 76-13-211, MCA, is amended to read:

**"76-13-211. Amount due for protection treated as lien.** (1) Whenever the department provides forest wildland fire protection during a forest fire season for any forest land wildland or timber not protected by the owner thereof of the land as required by this part or part 1, the amount due for the forest protection is a lien upon the land or timber which shall continue that continues until such time as the amount due is paid.

(2) The lien has the same force, effect, and priority as general tax liens under the laws of the state and is subject and inferior only to tax liens on the lands. The county attorney of the county in which the land is situated shall on request of the department foreclose the lien in the name of the state and in the manner provided by law, or the county attorney upon the request

of the department shall institute an action against the forest landowner in the name of the state in any district or justice court having jurisdiction to recover the debt. The state in the action is not required to pay any fees or costs to the clerk of the court or justice of the peace.

(3) The remedies provided by this section are cumulative and do not affect the other provisions of this part or part 1 for the payment and collection of amounts due to the department."

{Internal References to 76-13-211: None.}

**Section 28.** Section 77-5-103, MCA, is amended to read:

**"77-5-103. Role of department.** (1) The department shall, under the direction and control of the board, do all the field work in the selection, location, examination, appraisement, and reappraisement of state timberlands.

(2) It shall do all acts required of it by the board, and under the direction of the board it has general charge of the timberlands of the state.

(3) It shall, under the supervision of the board:-

(a) execute all matters pertaining to forestry within the jurisdiction of the state;

(b) ~~have charge of all firewardens of the state and direct and aid them in their duties;~~

direct the protection, improvement, and condition of state forests;

(c) ~~take such any action as is~~ authorized by law to prevent and extinguish forest, brush, and grass wildland fires; and

(d) enforce the laws pertaining to forest and ~~brush~~cover nonforest lands and prosecute for any violation of those laws.

(4) ~~The department shall establish and maintain forest fire control training programs for state firefighters and other persons requiring training.~~" [\*\*Moved to 76-13-104\*\*]

{Internal References to 77-5-103: None.}

**NEW SECTION. Section 29. Directions to code commissioner.** Sections 76-13-131 through 76-13-135 are intended to be renumbered and codified as an integral part of Title 76, chapter 13, part 4.

**NEW SECTION. Section 30. {standard} Repealer.** Sections 76-11-101, 76-11-102, 76-13-106, 76-13-109, 77-5-104, 77-5-105, and 77-5-106, MCA, are repealed.

{Internal References to 76-11-101: None.}

*Internal References to 76-11-102: None.*

*Internal References to 76-13-106: None.*

*Internal References to 76-13-109: None.*

*Internal References to 77-5-104: 87-1-504*

*Internal References to 77-5-105: None.*

*Internal References to 77-5-106: None.}*

NEW SECTION. Section 31. {standard}

**Codification instruction.** (1) [Sections 1, 6, and 8] are intended to be codified as an integral part of Title 76, chapter 13, part 1, and the provisions of Title 76, chapter 13, part 1, apply to [sections 1, 6, and 8].

(2) [Section 16] is intended to be codified as an integral part of Title 76, chapter 13, part 2, and the provisions of Title 76, chapter 13, part 2, apply to [section 16].

- END -

{Name : Leanne M. Kurtz  
Title : Research Analyst  
Agency : Legislative Services Division  
Phone : 444-3064  
E-Mail : lekurtz@state.mt.us}

## Appendix F

LC2003

\*\*\*\* Bill No. \*\*\*\*  
Introduced By \*\*\*\*\*  
By Request of the \*\*\*\*\*

### HJR 10 PROPOSED BILL #4

A Bill for an Act entitled: "An Act generally revising local government fire protection laws; changing those who may petition for creation, annexation, division, and dissolution of rural fire districts from freeholders to registered voters residing in the area and changing the percentage of petitioners required from 50% to 40%; allowing cities and towns to be included in a rural fire district upon approval of the city or town council and requiring appropriate notice procedures if that occurs; prohibiting signatures from being withdrawn from a petition after a certain time period; revising the powers and duties of rural fire district trustees; removing limitations on trustees' ability to enter into contracts for fire protection services; providing that two or more rural fire districts that consolidate result in a new rural fire district for mill levy purposes; revising how a rural fire district may be divided; requiring trustees to develop a plan for division and forward the plan to the board of county commissioners; revising the distribution of assets and liabilities of a

district upon division; allowing territory within a city or town to be annexed into a rural fire district; requiring a county governing body to either provide direct fire protection to county land or to enter into an agreement for that protection; removing the prohibition on more than one fire company for certain locations; removing the provision that rural fire district chiefs serve without compensation; removing the provision allowing voluntary urban fire crews for use in rural areas; amending sections 7-33-2101, 7-33-2102, 7-33-2103, 7-33-2104, 7-33-2105, 7-33-2106, 7-33-2107, 7-33-2109, 7-33-2120, 7-33-2122, 7-33-2123, 7-33-2124, 7-33-2125, 7-33-2126, 7-33-2128, 7-33-2202, 7-33-2205, 7-33-2206, 7-33-2210, 7-33-2311, 7-33-2312, 7-33-2313, and 7-33-2401, MCA; and repealing sections 7-33-2204 and 7-33-2207, MCA."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 7-33-2101, MCA, is amended to read:

**"7-33-2101. Rural fire districts authorized -- petition.** (1) The board of county commissioners is authorized to establish fire districts in any unincorporated territory or, subject to subsection (2), incorporated city or town upon presentation

of a petition in writing signed by the owners of 50% 40% or more of the area of the privately owned lands included within the proposed district who constitute a majority of the taxpayers who are freeholders of such area and whose names appear upon the last-completed assessment roll registered voters residing in the proposed district

(2) Cities and towns may be included in the district upon approval by the city or town council."

{Internal References to 7-33-2101:  
7-33-2128\* }

**Section 2.** Section 7-33-2102, MCA, is amended to read:

**"7-33-2102. Notice of hearing.** The board shall, within 10 days after the receipt of the petition, give notice of the hearing at least 10 days prior to the hearing:

(1) by mailing a copy of the notice as provided in 7-1-2122 or 7-1-4129 if the proposed district or a portion of the proposed district is in an incorporated city or town to each freeholder registered voter residing in the proposed district at the address shown in the assessment roll; and

(2) by publishing the notice as provided in 7-1-2121 or 7-1-4127 if the proposed district or portion of the proposed district is in an incorporated city or town."

{Internal References to 7-33-2102:  
7-33-2128\* }

**Section 3.** Section 7-33-2103, MCA, is amended to read:

**"7-33-2103. Hearing on petition -- decision.** (1)(a) The board shall proceed to hear the petition at the time set or at any time within 5 days thereafter to which the same is postponed or continued with due notice and may grant the same unless it is established thereat of the time set if reasonable notice of the postponement is given. The board may establish the district unless it determines that the petition bears insufficient signatures as above required or, if originally sufficient, that by reason of written withdrawals thereof of signatures it has become insufficient.

(b) Signatures may not be withdrawn less than 20 days before the date set for adoption of the petition.

(2) The board may adjust the boundaries of the proposed district to reflect any freeholder's the written request of any registered voter who resides in the proposed district and who owns parcels of land in the proposed district for subtraction or annexation of parcels of the freeholder's voter's land adjacent to the boundary line of the proposed district. Such The written request must be submitted to the board prior to or on the date set for hearing on the petition.

(3) The board shall render its decision within 30 days after the hearing."

{Internal References to 7-33-2103:  
7-33-2128 }

**Section 4.** Section 7-33-2104, MCA, is amended to read:

**"7-33-2104. Operation of fire districts.**

~~Whenever the~~ When a board of county commissioners shall have established establishes a fire district in any unincorporated territory, or incorporated city or town, or village, said the commissioners:

(1) may contract with a city, town, or private fire company, or other public entity to furnish all fire protection services for property within said the district; or

(2) shall appoint five qualified trustees to govern and manage the affairs of the fire district."

{Internal References to 7-33-2104:  
7-33-2120\* }

**Section 5.** Section 7-33-2105, MCA, is amended to read:

**"7-33-2105. Powers and duties of trustees.**

(1) The trustees:

(a) shall prepare and adopt suitable bylaws;i:-

(2)(b) ~~The trustees~~ have the authority to provide adequate and standard firefighting and emergency response apparatus, equipment, personnel, housing, and facilities, including real property and emergency medical services and equipment, for the protection of the district;i:-

~~They shall~~

(c) may appoint and form fire companies that have the same duties, exemptions, and privileges as other fire companies for retirement purposes only;

(3) ~~The trustees~~ (d) shall prepare annual budgets and request special levies for the budgets. The budget laws relating to county budgets must, as far as applicable, apply to fire districts;i:-

(e) may enter into contracts as provided in 7-33-2107; and

(f) may pledge income to secure financing of the district as provided in 7-33-2109.

(2) All money received by the trustees must be deposited in the county treasurer's office and credited to the fire district."

{Internal References to 7-33-2105:  
a7-33-2109      x7-33-2120\*      x7-33-2403 }

**Section 6.** Section 7-33-2106, MCA, is amended to read:

**"7-33-2106. Details relating to board of trustees of fire district.** (1) (a) The five trustees initially appointed by the county commissioners hold staggered terms of office until their successors are elected or appointed and qualified as provided in this section.

(b) The initial trustees' terms of office must be drawn by lot and include:

- (i) 3 years for one trustee;
- (ii) 2 years for two trustees; and

(iii) 1 year for two trustees.

(c) Upon expiration of the terms provided in subsection (1)(b), each trustee shall serve a 3-year term of office.

(2) Trustees must be elected as provided in 13-1-104(3), 13-1-401, and subsection (3) of this section or appointed as provided in subsection (4) of this section. The term of office is 3 years beginning at the first district meeting following their election or appointment and continuing until their successors are elected or appointed and qualified. Appointments to fill vacancies occurring during the term of office of a trustee must be made by the county governing body and appointees shall hold office until the next regular election. An elector, as defined in Title 13, who resides in the district or any holder of title to lands within the district who presents a proof of payment of taxes on the lands at the polling place is eligible to vote in the election.

(3) Candidates for the office of trustee of the fire district to be filled by election may be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election day and signed by at least five electors of the district.

(4) If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the county governing body

shall declare elected by acclamation each candidate who filed a nominating petition for a position. If a nomination is not made for one or more trustee offices, the county governing body shall appoint one or more trustees as necessary to fill those offices. A trustee taking office pursuant to this subsection serves the trustee term of office as if that trustee had been elected.

(5) The trustees shall organize by choosing a presiding officer officers and appointing one member to act as secretary."

{Internal References to 7-33-2106:

x7-33-2120      x7-33-2403      x7-33-2403 }

**Section 7.** Section 7-33-2107, MCA, is amended to read:

**"7-33-2107. Contracts for fire protection services.** (1) The trustees of such a fire district, provided that the owners of 10% of the taxable value of the property in any such fire district may elect to make such a contract:

(a) may contract with the council of any city or town or with the trustees of any other fire district established in any unincorporated territory, town, or village which has any boundary line lying within 5 straight-line miles of any boundary line of such district, whether the city or town or other fire district shall lie within the same county or another county, for the extension of fire protection service by the city

~~or town or by such other fire district to property included within such district; and~~

~~(b) may agree to pay a reasonable consideration therefor.~~

~~(2) Likewise, the trustees may contract to permit such fire district's equipment and facilities to be used by the cities, towns, or other fire districts which have any boundary lines lying within 5 straight-line miles of any boundary line of such district.~~

~~(3) Likewise, the trustees may enter into contracts with public or private parties under which such district fire company may extend fire protection to public or private property lying outside of such district or any other district or city limits but within 5 straight-line miles of any boundary line of such district, whether such public or private property shall lie within the same county or another county. Such district fire company may use such fire district's equipment and facilities outside of such district in the performance of such contracts may enter into contracts for fire protection services.~~

~~(4) (2) All money received from such contracts shall must be deposited in the county treasurer's office and credited to the fire district fund holding such the contracts.~~

~~(5) (3) The relationship between the fire district and the city, town, or private fire service shall be entity with which the district~~

has contracted is that of an independent contractor."

{Internal References to 7-33-2107: None.}

**Section 8.** Section 7-33-2109, MCA, is amended to read:

**"7-33-2109. Tax levy, debt incurrence, and bonds authorized.** (1) At the time of the annual levy of taxes, the board of county commissioners may, subject to 15-10-420, levy a special tax upon all property within a rural fire district for the purpose of buying or maintaining fire protection facilities, including real property, and apparatus, including emergency response apparatus, for the district or for the purpose of paying to a city, town, or private fire service the consideration provided for in any contract with the council of the city, town, or private fire service for the purpose of furnishing fire protection service to property within the district. The tax must be collected as are other taxes.

(2) The board of county commissioners or the trustees, if the district is governed by trustees, may pledge the income of the district, subject to the requirements and limitations of 7-33-2105~~(3)~~ (1)(d), to secure financing necessary to procure equipment and buildings, including real property, to house the equipment.

(3) In addition to the levy authorized in subsection (1), a district may borrow money by the

issuance of bonds to provide funds for the payment of all or part of the cost of buying or maintaining fire protection facilities, including real property, and apparatus, including emergency response apparatus, for the district.

(4) The amount of debt incurred pursuant to subsection (2) and the amount of bonds issued pursuant to subsection (3) and outstanding at any time may not exceed 1.1% of the total assessed value of taxable property, determined as provided in 15-8-111, within the district, as ascertained by the most recent assessment for state and county taxes prior to the incurrence of debt or the issuance of the bonds.

(5) The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and limitations prescribed for the issuance of bonds by counties under Title 7, chapter 7, part 22."

{Internal References to 7-33-2109: None.}

**Section 9.** Section 7-33-2120, MCA, is amended to read:

**"7-33-2120. Consolidation of fire districts -- mill levy limitations.** (1) Two or more rural fire districts may consolidate to form a single rural fire district upon an affirmative vote of each rural fire district's board of trustees. At the time they vote to consolidate, the boards of

trustees must also adopt a consolidation plan. The plan must contain:

(a) a timetable for consolidation, including the effective date of consolidation, which must be after the time allowed for protests to the creation of the consolidated rural fire district under subsection (3);

(b) the name of the new rural fire district;

(c) a boundary map of the new rural fire district; and

(d) the estimated financial impact of consolidation on the average taxpayer within the proposed district.

(2) Within 14 days of the date that the trustees vote to consolidate, notice of the consolidation must be published as provided in 7-1-2121 or in 7-1-4127 if the district or part of the district is in an incorporated city or town in each county in which any part of the consolidated fire district will be located. A public hearing on the consolidation must be held within 14 days of the first publication of notice. The hearing must be held before the joint boards of trustees at a time and place set forth in the publication of notice.

(3) Property owners of each affected rural fire district may submit written protests opposing consolidation to the trustees of their district. If within 21 days of the first publication of notice more than 50% of the property owners in an

existing district protest the consolidation, it is void.

(4) After consolidation, the former rural fire districts constitute a single rural fire district governed under the provisions of 7-33-2104 through 7-33-2106.

(5) Two or more rural fire districts that consolidate pursuant to this section result in the creation of a new rural fire district for the purposes of determining mill levy limitations. [\*\*44 Op. Atty. Gen. No. 16\*\*]"

{Internal References to 7-33-2120: None.}

**Section 10.** Section 7-33-2122, MCA, is amended to read:

**"7-33-2122. Petition for division -- hearing and notice.** (1) Whenever a petition in writing shall be made to the county commissioners, signed by the owners of 20% or more of the privately owned lands of an area proposed to be detracted from the original district who constitute 20% or more of the taxpayers who are freeholders within such proposed detracted area and whose names appear upon the last completed assessment roll, the county commissioners shall, within 10 days from the receipt of such petition, give notice of the hearing of the petition by mailing a copy of the notice by first-class mail to each freeholder in the district at the address shown in the assessment roll and by causing a notice thereof to be posted, at least 10 days

prior to the time appointed by them for the consideration of the petition, in at least three of the most public places within the proposed detracted area and also in at least three of the most public places within the remaining area.

(2) The petition for detraction shall describe the boundaries of the proposed detracted area and the boundaries of the remaining area.

(3) The county commissioners shall, on the day fixed for hearing such petition (or on any legally postponed day), proceed to hear the petition (1)(a) A fire district's board of trustees may vote to divide the district upon an affirmative vote of the board and upon receipt of a petition signed by 40% or more of the registered voters of an area proposed to be detracted from the original district.

(b) The petition must describe the boundaries of the proposed detracted area and the boundaries of the remaining area.

(2) At the time it votes to divide, the board shall adopt a division plan that contains:

(a) a timetable for division, including the effective date, that must be after the time allowed for protests to the division;

(b) the names of the new rural fire districts;

(c) the boundary maps of the new districts;

(d) the estimated financial impact of the division on an owner of a home valued at \$100,000; and

(e) a method for the fair and equitable division of the assets and liabilities of the original district among the new districts.

(3) The board of trustees shall forward the plan to the board of county commissioners in the county where the districts are located.

(4) Within 21 days of receipt of the plan, the board of county commissioners shall set a date for a public hearing on the division and shall give notice of the hearing as provided in 7-1-2121 or 7-1-4127, if any part of the proposed detracted area is within the limits of an incorporated city or town."

{Internal References to 7-33-2122:  
7-33-2121\*    7-33-2126    7-33-2127 }

**Section 11.** Section 7-33-2123, MCA, is amended to read:

**"7-33-2123. Decision on petition for division -- protest.** The petition ~~shall~~ must be granted and the original districts ~~shall~~ thereupon must be divided into separate districts unless at the time of the hearing on ~~such~~ the petition protests ~~shall be~~ are presented by ~~the owners of~~ 50% 40% or more of ~~the area of the privately owned lands included within the entire original district who constitute a majority of the taxpayers who are freeholders of~~ registered voters residing in the entire original district ~~and whose names appear upon the last-completed assessment roll.~~ If such the required amount of protests are presented, the

~~petition for division shall be disallowed~~ may not be approved."

{Internal References to 7-33-2123:  
7-33-2121\*    7-33-2127 }

**Section 12.** Section 7-33-2124, MCA, is amended to read:

**"7-33-2124. Distribution of assets and liabilities following division.** (1) Upon the division of districts, ~~money on hand shall be apportioned between the divided areas according to their respective taxable valuations. All other assets of the original district shall become the property of the remaining area, but a reasonable value shall be placed upon such other assets, and the remaining area shall become indebted to the detracted area for its proportionate share thereof, based upon taxable valuations~~ the assets and liabilities of the original rural fire district must be distributed in accordance with the division plan as provided in 7-33-2122.

(2) Any detracted area shall remain liable for any existing warrant and bonded indebtedness of the original district."

{Internal References to 7-33-2124:  
7-33-2121 }

**Section 13.** Section 7-33-2125, MCA, is amended to read:

**"7-33-2125. Annexation of adjacent territory not contained in a fire district.** (1)

Adjacent territory within or outside of the limits of an incorporated city or town that is not already a part of a fire district may be annexed in the following manner:

(a) A petition in writing by the ~~owners of 50% 40%~~ or more of the ~~area of privately owned lands of the adjacent area proposed to be annexed who constitute a majority of the taxpaying freeholders~~ ~~the registered voters who reside~~ within the proposed area to be annexed and whose names appear upon the last-completed assessment roll must be presented to the board of trustees of the district for approval. If the proposed annexation is approved by the board of trustees, the petition must be presented to the board of county commissioners.

(b) At the first regular meeting of the board of county commissioners after the presentation of the petition, the commissioners shall set a date to hold a hearing on the petition. The date of the hearing may not be less than 4 weeks after the date of the presentation of the petition to the board of county commissioners. The board of county commissioners shall publish notice of the hearing as provided in 7-1-2121 or in 7-1-4127 if any part of the area proposed to be annexed is within an incorporated city or town.

(2) On the date set for the hearing, the board of county commissioners shall consider the petition and any objections to the annexation. The board shall approve the annexation unless a

protest petition signed by a majority of the landowners of the area proposed for annexation is presented at the hearing, in which case the annexation must be disapproved.

(3) The annexed territory is liable for any outstanding warrant and bonded indebtedness of the original district.

(4) Territory that is within the limits of an incorporated city or town may only be annexed upon the approval of the city or town council."  
*{Internal References to 7-33-2125: None.}*

**Section 14.** Section 7-33-2126, MCA, is amended to read:

**"7-33-2126. Annexation of adjacent territory contained in a fire district.** (1) Adjacent territory that is already a part of a fire district may withdraw from ~~such the~~ fire district and become annexed to another fire district in the following manner:

(a) A petition in writing by ~~the owners of 50% 40%~~ or more of the ~~privately owned lands of an area which is part of any organized fire district who constitute a majority of the taxpaying freeholders registered voters residing within such the area according to the last-completed assessment roll shall~~ ~~must~~ be presented to the county commissioners, asking that ~~such the~~ area be transferred to and included in any other organized fire district to which ~~said the~~ area is adjacent. The petition must set forth the change of

boundaries to be affected by such the proposed transfer of area.

(b) The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in 7-33-2122. The withdrawal and annexation ~~shall must~~ be allowed unless protests are presented at the hearing by ~~the owners of 50% 40%~~ or more of the ~~area of the privately owned lands included within either district affected who constitute a majority of the taxpaying freeholders of registered voters residing in~~ either district according to the last-completed assessment roll.

(2) The withdrawals and annexation ~~shall~~ may be allowed only upon a showing of more advantageous proximity and communications with the firefighting facilities of the other district."

{Internal References to 7-33-2126: None.}

**Section 15.** Section 7-33-2128, MCA, is amended to read:

**"7-33-2128. Dissolution of fire district.** Any fire district organized under this part may be dissolved by the board of county commissioners upon presentation of a petition ~~therefor for dissolution~~ signed by ~~the owners of 50% 40%~~ or more of the ~~area of the privately owned lands included within such fire district who constitute a majority of the taxpayers who are freeholders of such registered voters residing in the area and whose names appear upon the last-completed assessment roll.~~ The procedure and requirements

outlined in 7-33-2101 through 7-33-2103 shall apply to ~~such~~ requests for dissolution of fire districts."

{Internal References to 7-33-2128: None.}

**Section 16.** Section 7-33-2202, MCA, is amended to read:

**"7-33-2202. Functions of county governing body.** The county governing body, with respect to rural fire control, shall carry out the specific authorities and duties imposed in this section:

- (1) The governing body shall:
  - (a) provide for the organization of volunteer rural fire control crews; and
  - (b) provide for the formation of county volunteer fire companies.
- (2) The governing body shall appoint a county rural fire chief and such district rural fire chiefs, subject to the direction and supervision of the county rural fire chief, as it considers necessary.

(3) ~~The Pursuant to 76-13-105 [LC2002, section 7], the~~ county governing body shall, within the limitations of 7-33-2205 through 7-33-2209, either:

~~(a) directly protect the range, farm, and forest lands within the county from fire land in the county that is not in a wildland fire protection district, as provided in 76-13-204, or under the protection of a municipality, state agency, or federal agency; or~~

(b) enter into an agreement for wildland fire protection with a recognized agency, as that term is defined in 76-13-102.

(4) The county governing body may enter into mutual aid agreements for itself and for county volunteer fire companies with:

- (a) other fire districts;
- (b) unincorporated municipalities;
- (c) incorporated municipalities;
- (d) state agencies;
- (e) private fire prevention agencies;
- (f) federal agencies;
- (g) fire service areas; or

(h) governing bodies of other political subdivisions.

(5) If the county governing body has not concluded a mutual aid agreement, the county governing body, a representative of the county governing body, or an incident commander may request assistance pursuant to 10-3-209."

{Internal References to 7-33-2202: None.}

**Section 17.** Section 7-33-2205, MCA, is amended to read:

**"7-33-2205. Establishment of fire season -- permit requirements -- reimbursement of costs.** (1) The county governing body may in its discretion establish fire seasons annually, during which a person may not ignite or set a forest fire, including a slash-burning fire, land-clearing fire, debris-burning fire, or open fire within the

county protection area on any residential or commercial property, forest, range, or croplands subject to the provisions of this part without having obtained an official written permit or permission to ignite or set a fire from the recognized protection agency for that protection area.

(2) A permit or permission is not needed for recreational fires measuring less than 48 inches in diameter that are surrounded by a nonflammable structure and for which a suitable source of extinguishing the fire is available.

(3) A person who purposely ignites a fire in violation of this section shall reimburse the county governing body or recognized protection agency for costs incurred for any fire suppression activities resulting from the illegal fire, as provided in 50-63-103."

{Internal References to 7-33-2205:  
7-33-2202\* }

**Section 18.** Section 7-33-2206, MCA, is amended to read:

**"7-33-2206. Violations.** A person who ignites or sets a forest fire, including a slash-burning fire, land-clearing fire, debris-burning fire, or open fire on any residential or commercial property, forest, range, or cropland subject to the provisions of this part without first having obtained a written permit or permission from the recognized protection agency

for that protection area to ignite or set the fire is guilty of a misdemeanor."

{Internal References to 7-33-2206:  
7-33-2202\* }

**Section 19.** Section 7-33-2210, MCA, is amended to read:

**"7-33-2210. State to be reimbursed for forest wildland fire suppression activities in noncooperating counties.** A county that has not entered into a cooperative or other written agreement with the state for forest wildland fire protection shall reimburse the state for costs incurred by the state in connection with state fire suppression activities resulting from a forest wildland fire emergency on land in that county that is not in a wildland fire protection district, as provided in 76-13-204 or protected through an agreement with a recognized agency, as provided in 7-33-2202(3)(b)."

{Internal References to 7-33-2210: None.}

**Section 20.** Section 7-33-2311, MCA, is amended to read:

**"7-33-2311. Fire companies authorized.** (1) Fire companies in unincorporated towns and villages are organized by filing with the county clerk of the county in which they are located a certificate in writing, signed by the presiding officer and secretary, setting forth providing the date of organization, name, officers, and roll of

active and honorary members or a copy of the certificate provided for in 19-17-402. The certificate and filing must be renewed annually on or before September 1.

(2) ~~A town or village is not allowed more than one company for each 1,000 inhabitants, but one company must be allowed in a city, town, or village in which the population is less than 1,000.~~

(3) ~~(2)~~ A fire company is not allowed more than 28 certificate members."

{Internal References to 7-33-2311:  
7-33-2312      10-3-209      19-17-102 }

**Section 21.** Section 7-33-2312, MCA, is amended to read:

**"7-33-2312. Organization of fire company.** (1) Every A fire company organized pursuant to 7-33-2311 ~~must shall~~ choose or elect a foreman, who is ~~the~~ presiding officer, a secretary, and a treasurer and may establish and adopt bylaws and regulations and impose penalties, not exceeding \$5 or expulsion for each offense.

(2) Every regularly organized fire department may adopt a department seal, stating the name of the particular fire department to which it belongs. The seal is under the control of and for the use of the secretary and ~~shall must~~ be affixed by ~~him~~ the secretary to exempt certificates, certificates of active membership, and such any other documents as that the bylaws

may provide. The secretary of every department having a seal ~~must~~ shall take the constitutional oath of office and give such a bond as ~~that~~ the bylaws provide for the faithful performance of his ~~the secretary's~~ duties."

{Internal References to 7-33-2312: None.}

**Section 22.** Section 7-33-2313, MCA, is amended to read:

**"7-33-2313. Powers and duties of chief -- request for assistance -- definitions.** (1) The chief of ~~every~~ a fire department company shall inquire into the cause of every fire occurring in the town in which the chief serves as the chief and shall keep a record of every fire. The chief shall aid in the enforcement of all fire ordinances, examine buildings in the process of erection, report violations of ordinances relating to prevention or extinguishment of fires and, when directed by the proper authorities, institute prosecutions for the violation of those ordinances, and perform other duties as may be imposed upon the chief by proper authority. The chief's compensation, if any, must be fixed and paid by the city or town authorities. The chief shall attend all fires, with the chief's badge of office conspicuously displayed. The chief shall prevent injury to, take charge of, and preserve all property rescued from fires and return it to the owner on the payment of the expenses incurred in saving and keeping it. The amount of the

expenses, when not agreed to, must be fixed by a justice of the peace.

(2) The chief shall devise and formulate or cause to be devised and formulated a course or plan of instruction or training program making available to each regular member of the chief's ~~department~~ company not less than 30 hours of instruction each year in matters pertaining to firefighting. The chief shall supervise the operation of the training plan or program and maintain training records for each current and former firefighter for the purposes of the public employees' retirement board provided for in 2-15-1009.

(3) If the county commissioners, trustees of a fire district, or governing body of a fire service area have not concluded a mutual aid agreement to protect an unincorporated town or village against natural incidents, emergencies, or disasters or incidents, emergencies, or disasters caused by persons, the chief may request assistance pursuant to 10-3-209.

(4) As used in this section, "incidents", "disasters", or "emergencies" has the meaning provided in 10-3-103."

{Internal References to 7-33-2313: None.}

**Section 23.** Section 7-33-2401, MCA, is amended to read:

**"7-33-2401. Fire service area -- establishment -- alteration -- dissolution.** (1)

Upon receipt of a petition signed by at least 30 owners of real property in the proposed service area, or by a majority of the owners of real property if there are no more than 30 owners of real property in the proposed service area, the board of county commissioners may establish a fire service area within an unincorporated area not part of a rural fire district in the county to provide the services and equipment set forth in 7-33-2402.

(2) To establish a fire service area, the board shall:

(a) pass a resolution of intent to form the area, with public notice as provided in 7-1-2121 and ~~written notice as provided in 7-1-2122~~;

(b) hold a public hearing no earlier than 30 or later than 90 days after passage of the resolution of intent;

(c) at the public hearing:

(i) accept written protests from property owners of the area of the proposed area; and

(ii) receive general protests and comments relating to the establishment of the fire service area and its boundaries, rates, kinds, types, or levels of service, or any other matter relating to the proposed fire service area; and

(d) pass a resolution creating the fire service area. The area is created effective 60 days after passage of the resolution unless by that date more than 50% of the property owners of

the proposed fire service area protest its creation.

(3) Based on testimony received in the public hearing, the board in the resolution creating the fire service area may establish different boundaries, establish a different fee schedule than proposed, change the kinds, types, or levels of service, or change the manner in which the area will provide services to its residents.

(4) The board of county commissioners may alter the boundaries or the kinds, types, or levels of service or dissolve a fire service area, using the procedures provided in subsection (2). The board of county commissioners shall alter the boundaries of a fire service area to exclude any area that is annexed by a city or town, using the procedures provided in subsection (2). Any existing indebtedness of a fire service area that is dissolved remains the responsibility of the owners of property within the area, and any assets remaining after all indebtedness has been satisfied must be returned to the owners of property within the area."

{Internal References to 7-33-2401:  
7-33-2402 }

**NEW SECTION. Section 24. {standard}**

**Repealer.** Sections 7-33-2204 and 7-33-2207, MCA, are repealed.

{Internal References to 7-33-2204: None.}

*Internal References to 7-33-2207: 7-33-2202\* }*

- END -

{Name : Leanne M. Kurtz  
Title : Research Analyst  
Agency : Legislative Services Division  
Phone : 444-3064  
E-Mail : lekurtz@state.mt.us}

## Appendix G

LC2004

\*\*\*\* Bill No. \*\*\*\*  
Introduced By \*\*\*\*\*  
By Request of the \*\*\*\*\*

HJR 10 PROPOSED BILL #5

A Bill for an Act entitled: "An Act revising laws governing mutual aid agreements for protection against natural disasters and other incidents and emergencies; including governing bodies of political subdivisions in other states as entities that may participate in certain mutual aid agreements and from which assistance may be requested; requiring the governor to allow political subdivisions to directly negotiate mutual aid agreements; requiring the governor to designate political subdivisions as officials authorized to request and receive mutual aid assistance; and amending sections 7-33-2108, 7-33-2202, 7-33-2405, 7-33-4112, 10-3-202, and 10-3-205, MCA."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 7-33-2108, MCA, is amended to read:

**"7-33-2108. Mutual aid agreements -- request if no agreement exists -- definitions.** (1)

A mutual aid agreement is an agreement for protection against natural disasters, incidents, or emergencies or disasters, incidents, or emergencies caused by persons.

(2) Fire district trustees may enter mutual aid agreements with the proper authority of:

- (a) other fire districts;
- (b) unincorporated municipalities;
- (c) incorporated municipalities;
- (d) state agencies;
- (e) private fire prevention agencies;
- (f) federal agencies;
- (g) fire service areas; and
- (h) governing bodies of other political subdivisions in Montana; and
- (i) governing bodies of political subdivisions in any state that has entered into an interstate mutual aid compact with the state of Montana.

(3) If the fire district trustees have not concluded a mutual aid agreement, then the trustees, a representative of the trustees, or an incident commander may request assistance pursuant to 10-3-209 from any of the entities listed in subsection (2).

(4) As used in this section, "incidents", "disasters", or "emergencies" has the meaning ascribed to the term in 10-3-103."

{Internal References to 7-33-2108:

**Section 2.** Section 7-33-2202, MCA, is amended to read:

**"7-33-2202. Functions of county governing body.** The county governing body, with respect to rural fire control, shall carry out the specific authorities and duties imposed in this section:

(1) The governing body shall:

(a) provide for the organization of volunteer rural fire control crews; and

(b) provide for the formation of county volunteer fire companies.

(2) The governing body shall appoint a county rural fire chief and such district rural fire chiefs, subject to the direction and supervision of the county rural fire chief, as it considers necessary.

(3) The county governing body shall, within the limitations of 7-33-2205 through 7-33-2209, protect the range, farm, and forest lands within the county from fire.

(4) The county governing body may enter into mutual aid agreements for itself and for county volunteer fire companies with:

(a) other fire districts;

(b) unincorporated municipalities;

(c) incorporated municipalities;

(d) state agencies;

(e) private fire prevention agencies;

(f) federal agencies;

(g) fire service areas; or  
 (h) governing bodies of other political subdivisions in Montana; or  
(i) governing bodies of political subdivisions in any state that has entered into an interstate mutual aid compact with the state of Montana.

(5) If the county governing body has not concluded a mutual aid agreement, the county governing body, a representative of the county governing body, or an incident commander may request assistance pursuant to 10-3-209 from any of the entities listed in subsection (2)."

{Internal References to 7-33-2202: None.}

**Section 3.** Section 7-33-2405, MCA, is amended to read:

**"7-33-2405. Mutual aid agreements -- request if no agreement exists -- definitions.** (1) A mutual aid agreement is an agreement for protection against natural disasters, incidents, or emergencies or disasters, incidents, or emergencies caused by persons.

(2) The governing body of a fire service area may enter mutual aid agreements with the proper authority of:

(a) other fire service areas;

(b) unincorporated municipalities;

(c) incorporated municipalities;

(d) state agencies;

(e) private fire prevention agencies;

(f) federal agencies;  
(g) fire districts; and  
(h) governing bodies of other political subdivisions in Montana; and  
(i) governing bodies of political subdivisions in any state that has entered into an interstate mutual aid compact with the state of Montana.

(3) If the governing body of a fire service area has not concluded a mutual aid agreement, the governing body, a representative of the governing body, or an incident commander may request assistance pursuant to 10-3-209 from any of the entities listed in subsection (2).

(4) As used in this section, "incidents", "disasters", or "emergencies" has the meaning ascribed to the term in 10-3-103."

{Internal References to 7-33-2405: None.}

**Section 4.** Section 7-33-4112, MCA, is amended to read:

**"7-33-4112. Mutual aid agreements -- request if no agreement exists -- definitions.** (1) A mutual aid agreement is an agreement for protection against natural disasters, incidents, or emergencies or disasters, incidents, or emergencies caused by persons.

(2) Councils or commissions of incorporated municipalities may enter mutual aid agreements with the proper authority of:

(a) other incorporated municipalities;

(b) fire districts;  
(c) unincorporated municipalities;  
(d) state agencies;  
(e) private fire prevention agencies;  
(f) federal agencies;  
(g) fire service areas; or  
(h) the governing body of other political subdivisions in Montana; or  
(i) governing bodies of political subdivisions in any state that has entered into an interstate mutual aid compact with the state of Montana.

(3) If the council or commission has not concluded a mutual aid agreement, the council or commission, a representative of the council or commission, or an incident commander may request assistance pursuant to 10-3-209 from any of the entities listed in subsection (2).

(4) As used in this section, "incidents", "disasters", or "emergencies" has the meaning ascribed to the term in 10-3-103."

{Internal References to 7-33-4112:  
7-33-4110 }

**Section 5.** Section 10-3-202, MCA, is amended to read:

**"10-3-202. Mutual aid -- cooperation.** (1) Political subdivisions, fire districts, fire service areas, and fire companies in unincorporated places and governmental fire agencies organized under Title 7, chapter 33 must

be encouraged and assisted by the division to conclude mutual aid arrangements with other public and private agencies within this state or in any state that has entered into an interstate mutual aid compact with the state of Montana for reciprocal aid and assistance in coping with incidents, emergencies, and disasters.

(2) In reviewing disaster and emergency plans and programs of political subdivisions, the division shall consider whether they contain adequate provisions for the reciprocal mutual aid.

(3) Local and interjurisdictional disaster and emergency agencies may assist in negotiation of reciprocal mutual aid agreements between the governor and the adjoining states (including foreign states or provinces) or political subdivisions of adjoining states or may directly negotiate and execute supplemental mutual aid agreements in accordance with 10-3-205(2)(a) and shall carry out arrangements of any of the agreements relating to the local and political subdivision.

(4) In providing assistance under parts 1 through 4 of this chapter, state departments and agencies shall cooperate to the fullest extent possible with each other and with local governments and relief agencies such as the American national red cross. Parts 1 through 4 of this chapter do not list or in any way affect the responsibilities of the American national red

cross under the act approved January 5, 1905 (33 Stat. 559), as amended."

{Internal References to 10-3-202:  
10-3-209 }

**Section 6.** Section 10-3-205, MCA, is amended to read:

**"10-3-205. Authority to join interstate mutual aid compact -- supplemental agreements.** (1) The governor of the state of Montana is hereby authorized for and in the name of the state of Montana to join with other states in the interstate mutual aid compact.

(2) The governor of the state of Montana is hereby authorized to negotiate and execute such supplemental agreements as may be necessary and proper to fully carry into effect the terms and provisions of the interstate mutual aid compact as set forth in 10-3-207.

(3) The governor of the state of Montana shall take all necessary action to delegate authority to political subdivisions to directly negotiate and execute supplemental mutual aid agreements so political subdivisions may enter into mutual aid agreements in accordance with 7-33-2109(2)(i), 7-33-2405(2)(i), and 7-33-4112(2)(i).

(4) The governor of the state of Montana shall take all necessary action to designate any political subdivision of the state of Montana as officials authorized to request or receive

assistance in accordance with Article III and the  
remaining terms and provisions of the interstate  
mutual aid compact provided in 10-3-207."

{*Internal References to 10-3-205:*  
10-3-207 }

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{Name : Leanne M. Kurtz  
Title : Research Analyst  
Agency : Legislative Services Division  
Phone : 444-3064  
E-Mail : lekurtz@state.mt.us}