

CHAPTER 30

GOVERNMENT - COUNTY

SENATE BILL 09-001

BY SENATOR(S) Gibbs and Penry, Kopp, Bacon, Boyd, Carroll M., Foster, Groff, Harvey, Heath, Hodge, Kester, King K., Lundberg, Morse, Newell, Romer, Scheffel, Schwartz, Shaffer B., Tapia, Tochtrop, White, Williams;
also REPRESENTATIVE(S) Scanlan and King S., Baumgardner, Carroll T., Curry, Fischer, Frangas, Gerou, Kerr J., Labuda, Levy, Massey, Nikkel, Pace, Roberts, Stephens, Tipton, Todd.

AN ACT**CONCERNING THE ESTABLISHMENT OF COMMUNITY WILDFIRE PROTECTION PLANS BY COUNTY GOVERNMENTS.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 3 of article 31 of title 23, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

23-31-312. Community wildfire preparedness plans - county governments - guidelines and criteria - legislative declaration - definitions. (1) (a) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

(I) COMMUNITY WILDFIRE PROTECTION PLANS, OR CWPPS, ARE AUTHORIZED AND DEFINED IN SECTION 101 OF TITLE I OF THE FEDERAL "HEALTHY FORESTS RESTORATION ACT OF 2003", PUB.L. 108-148, REFERRED TO IN THIS SECTION AS "HFRA". TITLE I OF HFRA AUTHORIZES THE SECRETARIES OF AGRICULTURE AND THE INTERIOR TO EXPEDITE THE DEVELOPMENT AND IMPLEMENTATION OF HAZARDOUS FUEL REDUCTION PROJECTS ON FEDERAL LANDS MANAGED BY THE UNITED STATES FOREST SERVICE AND THE BUREAU OF LAND MANAGEMENT WHEN THESE AGENCIES MEET CERTAIN CONDITIONS. HFRA EMPHASIZES THE NEED FOR FEDERAL AGENCIES TO WORK COLLABORATIVELY WITH LOCAL COMMUNITIES IN DEVELOPING HAZARDOUS FUEL REDUCTION PROJECTS, PLACING PRIORITY ON TREATMENT AREAS IDENTIFIED BY THE LOCAL COMMUNITIES THEMSELVES IN A CWPP. THE WILD LAND-URBAN INTERFACE AREA IS ONE OF THE IDENTIFIED PROPERTY AREAS THAT QUALIFY UNDER HFRA FOR THE USE OF THIS EXPEDITED ENVIRONMENTAL REVIEW PROCESS.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(II) THE DEVELOPMENT OF A CWPP CAN ASSIST A LOCAL COMMUNITY IN CLARIFYING AND REFINING ITS PRIORITIES FOR THE PROTECTION OF LIFE, PROPERTY, AND CRITICAL INFRASTRUCTURE IN ITS WILD LAND-URBAN INTERFACE AREA. THE CWPP BRINGS TOGETHER DIVERSE FEDERAL, STATE, AND LOCAL INTERESTS TO DISCUSS THEIR MUTUAL CONCERNS FOR PUBLIC SAFETY, COMMUNITY SUSTAINABILITY, AND NATURAL RESOURCES. THE CWPP PROCESS OFFERS A POSITIVE, SOLUTION-ORIENTED ENVIRONMENT IN WHICH TO ADDRESS CHALLENGES SUCH AS LOCAL FIRE-FIGHTING CAPABILITY, THE NEED FOR DEFENSIBLE SPACE AROUND HOMES AND HOUSING DEVELOPMENTS, THE EFFECT OF FIRE RATINGS AND COMBUSTIBILITY STANDARDS FOR BUILDING MATERIALS USED IN WILD LAND-URBAN INTERFACE AREAS, AND WHERE AND HOW TO PRIORITIZE LAND MANAGEMENT ON BOTH FEDERAL AND NONFEDERAL LANDS. CWPPS CAN BE AS SIMPLE OR COMPLEX AS A LOCAL COMMUNITY DESIRES.

(III) THE ADOPTION OF A CWPP BRINGS MANY BENEFITS TO THE STATE AND ADOPTING LOCAL COMMUNITY, INCLUDING:

(A) THE OPPORTUNITY TO ESTABLISH A LOCALLY APPROPRIATE DEFINITION AND BOUNDARY FOR THE WILD LAND-URBAN INTERFACE AREA;

(B) THE ESTABLISHMENT OF RELATIONS WITH OTHER STATE AND LOCAL GOVERNMENT OFFICIALS, LOCAL FIRE CHIEFS, STATE AND NATIONAL FIRE ORGANIZATIONS, FEDERAL LAND MANAGEMENT AGENCIES, PRIVATE HOMEOWNERS, ELECTRIC, GAS, AND WATER UTILITY PROVIDERS IN THE SUBJECT AREA, AND COMMUNITY GROUPS, THEREBY ENSURING COLLABORATION AMONG THESE GROUPS IN INITIATING A PLANNING DIALOGUE AND FACILITATING THE IMPLEMENTATION OF PRIORITY ACTIONS ACROSS OWNERSHIP BOUNDARIES;

(C) SPECIALIZED NATURAL RESOURCE KNOWLEDGE AND TECHNICAL EXPERTISE RELATIVE TO THE PLANNING PROCESS, PARTICULARLY IN THE AREAS OF GLOBAL POSITIONING SYSTEMS AND MAPPING, VEGETATION MANAGEMENT, ASSESSMENT OF VALUES AND RISKS, AND FUNDING STRATEGIES; AND

(D) STATEWIDE LEADERSHIP IN DEVELOPING AND MAINTAINING A LIST OR MAP OF COMMUNITIES AT RISK WITHIN THE STATE AND FACILITATING WORK AMONG FEDERAL AND LOCAL PARTNERS TO ESTABLISH PRIORITIES FOR ACTION.

(IV) CWPPS GIVE PRIORITY TO PROJECTS THAT PROVIDE FOR THE PROTECTION OF AT-RISK COMMUNITIES OR WATERSHEDS OR THAT IMPLEMENT RECOMMENDATIONS IN THE CWPP.

(V) CWPPS ASSIST LOCAL COMMUNITIES IN INFLUENCING WHERE AND HOW FEDERAL AGENCIES IMPLEMENT FUEL REDUCTION PROJECTS ON FEDERAL LANDS, HOW ADDITIONAL FEDERAL FUNDS MAY BE DISTRIBUTED FOR PROJECTS ON NONFEDERAL LANDS, AND IN DETERMINING THE TYPES AND METHODS OF TREATMENT THAT, IF COMPLETED, WOULD REDUCE THE RISK TO THE COMMUNITY.

(VI) THE DEVELOPMENT OF CWPPS PROMOTES ECONOMIC OPPORTUNITIES IN RURAL COMMUNITIES.

(b) BY ENACTING THIS SECTION, THE GENERAL ASSEMBLY INTENDS TO FACILITATE

AND ENCOURAGE THE DEVELOPMENT OF CWPPS IN COUNTIES WITH FIRE HAZARD AREAS IN THEIR TERRITORIAL BOUNDARIES AND TO PROVIDE MORE STATEWIDE UNIFORMITY AND CONSISTENCY WITH RESPECT TO THE CONTENT OF CWPPS IN COUNTIES NEEDING PROTECTION AGAINST WILDFIRES.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CWPP" MEANS A COMMUNITY WILDFIRE PROTECTION PLAN AS AUTHORIZED AND DEFINED IN SECTION 101 OF TITLE I OF THE FEDERAL "HEALTHY FORESTS RESTORATION ACT OF 2003", PUB.L. 108-148.

(b) "FIRE HAZARD AREA" MEANS AN AREA MAPPED BY THE COLORADO STATE FOREST SERVICE, IDENTIFIED IN SECTION 23-31-302, AS FACING A SUBSTANTIAL AND RECURRING RISK OF EXPOSURE TO SEVERE FIRE HAZARDS.

(3) NOT LATER THAN NOVEMBER 15, 2009, THE STATE FORESTER, IN COLLABORATION WITH REPRESENTATIVES OF THE UNITED STATES FOREST SERVICE, THE COLORADO DEPARTMENT OF NATURAL RESOURCES, COUNTY GOVERNMENTS, MUNICIPAL GOVERNMENTS, LOCAL FIRE DEPARTMENTS OR FIRE PROTECTION DISTRICTS, ELECTRIC, GAS, AND WATER UTILITY PROVIDERS IN THE SUBJECT AREA, AND STATE AND LOCAL LAW ENFORCEMENT AGENCIES, SHALL ESTABLISH GUIDELINES AND CRITERIA FOR COUNTIES TO CONSIDER IN PREPARING THEIR OWN CWPPS TO ADDRESS WILDFIRES IN FIRE HAZARD AREAS WITHIN THE UNINCORPORATED PORTION OF THE COUNTY.

(4) THE ADOPTION OF A CWPP BY A COUNTY GOVERNMENT SHALL BE GOVERNED BY THE REQUIREMENTS OF SECTION 30-15-401.7, C.R.S.

(5) THE STATE FORESTER SHALL SEND TIMELY NOTICE OF THE GUIDELINES AND CRITERIA ESTABLISHED PURSUANT TO SUBSECTION (3) OF THIS SECTION TO THE DEPARTMENT OF LOCAL AFFAIRS AND TO STATEWIDE ORGANIZATIONS REPRESENTING COLORADO COUNTIES AND MUNICIPALITIES AND SHALL POST SUCH INFORMATION ON THE WEB SITE OF THE COLORADO STATE FOREST SERVICE.

(6) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT THE PROVISIONS OF SECTION 23-31-309 OR THE WILDFIRE PREPAREDNESS PLAN DEVELOPED PURSUANT TO SUCH SECTION.

SECTION 2. Part 4 of article 15 of title 30, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

30-15-401.7. Determination of fire hazard area - community wildfire preparedness plans - adoption - legislative declaration - definitions. (1)(a) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

(I) COMMUNITY WILDFIRE PROTECTION PLANS, OR CWPPS, ARE AUTHORIZED AND DEFINED IN SECTION 101 OF TITLE I OF THE FEDERAL "HEALTHY FORESTS RESTORATION ACT OF 2003", PUB.L. 108-148, REFERRED TO IN THIS SECTION AS "HFRA". TITLE I OF HFRA AUTHORIZES THE SECRETARIES OF AGRICULTURE AND THE INTERIOR TO EXPEDITE THE DEVELOPMENT AND IMPLEMENTATION OF HAZARDOUS FUEL REDUCTION PROJECTS ON FEDERAL LANDS MANAGED BY THE

UNITED STATES FOREST SERVICE AND THE BUREAU OF LAND MANAGEMENT WHEN THESE AGENCIES MEET CERTAIN CONDITIONS. HFRA EMPHASIZES THE NEED FOR FEDERAL AGENCIES TO WORK COLLABORATIVELY WITH LOCAL COMMUNITIES IN DEVELOPING HAZARDOUS FUEL REDUCTION PROJECTS, PLACING PRIORITY ON TREATMENT AREAS IDENTIFIED BY THE LOCAL COMMUNITIES THEMSELVES IN A CWPP. THE WILD LAND-URBAN INTERFACE AREA IS ONE OF THE IDENTIFIED PROPERTY AREAS THAT QUALIFY UNDER HFRA FOR THE USE OF THIS EXPEDITED ENVIRONMENTAL REVIEW PROCESS.

(II) THE DEVELOPMENT OF A CWPP CAN ASSIST A LOCAL COMMUNITY IN CLARIFYING AND REFINING ITS PRIORITIES FOR THE PROTECTION OF LIFE, PROPERTY, AND CRITICAL INFRASTRUCTURE IN ITS WILD LAND-URBAN INTERFACE AREA. THE CWPP BRINGS TOGETHER DIVERSE FEDERAL, STATE, AND LOCAL INTERESTS TO DISCUSS THEIR MUTUAL CONCERNS FOR PUBLIC SAFETY, COMMUNITY SUSTAINABILITY, AND NATURAL RESOURCES. THE CWPP PROCESS OFFERS A POSITIVE, SOLUTION-ORIENTED ENVIRONMENT IN WHICH TO ADDRESS CHALLENGES SUCH AS LOCAL FIRE-FIGHTING CAPABILITY, THE NEED FOR DEFENSIBLE SPACE AROUND HOMES AND HOUSING DEVELOPMENTS, AND WHERE AND HOW TO PRIORITIZE LAND MANAGEMENT ON BOTH FEDERAL AND NONFEDERAL LANDS. CWPPS CAN BE AS SIMPLE OR COMPLEX AS A LOCAL COMMUNITY DESIRES.

(III) THE ADOPTION OF A CWPP BRINGS MANY BENEFITS TO THE STATE AND ADOPTING LOCAL COMMUNITY, INCLUDING:

(A) THE OPPORTUNITY TO ESTABLISH A LOCALLY APPROPRIATE DEFINITION AND BOUNDARY FOR THE WILD LAND-URBAN INTERFACE AREA;

(B) THE OPPORTUNITY TO STUDY THE EFFECT OF FIRE RATINGS AND COMBUSTIBILITY STANDARDS FOR BUILDING MATERIALS USED IN WILD LAND-URBAN INTERFACE AREAS;

(C) THE ESTABLISHMENT OF RELATIONS WITH OTHER STATE AND LOCAL GOVERNMENT OFFICIALS, LOCAL FIRE CHIEFS, STATE AND NATIONAL FIRE ORGANIZATIONS, FEDERAL LAND MANAGEMENT AGENCIES, PRIVATE HOMEOWNERS, ELECTRIC, GAS, AND WATER UTILITY PROVIDERS IN THE SUBJECT AREA, AND COMMUNITY GROUPS, THEREBY ENSURING COLLABORATION AMONG THESE GROUPS IN INITIATING A PLANNING DIALOGUE AND FACILITATING THE IMPLEMENTATION OF PRIORITY ACTIONS ACROSS OWNERSHIP BOUNDARIES;

(D) SPECIALIZED NATURAL RESOURCE KNOWLEDGE AND TECHNICAL EXPERTISE RELATIVE TO THE PLANNING PROCESS, PARTICULARLY IN THE AREAS OF GLOBAL POSITIONING SYSTEMS AND MAPPING, VEGETATION MANAGEMENT, ASSESSMENT OF VALUES AND RISKS, AND FUNDING STRATEGIES; AND

(E) STATEWIDE LEADERSHIP IN DEVELOPING AND MAINTAINING A LIST OR MAP OF COMMUNITIES AT RISK WITHIN THE STATE AND FACILITATING WORK AMONG FEDERAL AND LOCAL PARTNERS TO ESTABLISH PRIORITIES FOR ACTION.

(IV) CWPPS GIVE PRIORITY TO PROJECTS THAT PROVIDE FOR THE PROTECTION OF AT-RISK COMMUNITIES OR WATERSHEDS OR THAT IMPLEMENT RECOMMENDATIONS IN THE CWPP.

(V) CWPPS ASSIST LOCAL COMMUNITIES IN INFLUENCING WHERE AND HOW FEDERAL AGENCIES IMPLEMENT FUEL REDUCTION PROJECTS ON FEDERAL LANDS, HOW ADDITIONAL FEDERAL FUNDS MAY BE DISTRIBUTED FOR PROJECTS ON NONFEDERAL LANDS, AND IN DETERMINING THE TYPES AND METHODS OF TREATMENT THAT, IF COMPLETED, WOULD REDUCE THE RISK TO THE COMMUNITY.

(VI) THE DEVELOPMENT OF CWPPS PROMOTES ECONOMIC OPPORTUNITIES IN RURAL COMMUNITIES.

(b) BY ENACTING THIS SECTION, THE GENERAL ASSEMBLY INTENDS TO FACILITATE AND ENCOURAGE THE DEVELOPMENT OF CWPPS IN COUNTIES WITH FIRE HAZARD AREAS IN THEIR TERRITORIAL BOUNDARIES AND TO PROVIDE MORE STATEWIDE UNIFORMITY AND CONSISTENCY WITH RESPECT TO THE CONTENT OF CWPPS IN COUNTIES NEEDING PROTECTION AGAINST WILDFIRES.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CWPP" MEANS A COMMUNITY WILDFIRE PROTECTION PLAN AS AUTHORIZED AND DEFINED IN SECTION 101 OF TITLE I OF THE FEDERAL "HEALTHY FORESTS RESTORATION ACT OF 2003", PUB.L. 108-148.

(b) "FIRE HAZARD AREA" MEANS AN AREA MAPPED BY THE COLORADO STATE FOREST SERVICE, IDENTIFIED IN SECTION 23-31-302, C.R.S., AS FACING A SUBSTANTIAL AND RECURRING RISK OF EXPOSURE TO SEVERE FIRE HAZARDS.

(3) (a) NOT LATER THAN JANUARY 1, 2011, THE BOARD OF COUNTY COMMISSIONERS OF EACH COUNTY, WITH THE ASSISTANCE OF THE STATE FORESTER, SHALL DETERMINE WHETHER THERE ARE FIRE HAZARD AREAS WITHIN THE UNINCORPORATED PORTION OF THE COUNTY.

(b) NOT LATER THAN ONE HUNDRED EIGHTY DAYS AFTER DETERMINING THERE ARE FIRE HAZARD AREAS WITHIN THE UNINCORPORATED PORTION OF A COUNTY, THE BOARD OF COUNTY COMMISSIONERS, IN COLLABORATION WITH THE REPRESENTATIVES OF THE ORGANIZATIONS OR ENTITIES ENUMERATED IN SECTION 23-31-312 (3), C.R.S., THAT ESTABLISHED THE GUIDELINES AND CRITERIA, SHALL PREPARE A CWPP FOR THE PURPOSE OF ADDRESSING WILDFIRES IN FIRE HAZARD AREAS WITHIN THE UNINCORPORATED PORTION OF THE COUNTY. IN PREPARING THE CWPP, THE BOARD SHALL CONSIDER THE GUIDELINES AND CRITERIA ESTABLISHED BY THE STATE FORESTER AND SUCH REPRESENTATIVES PURSUANT TO SECTION 23-31-312 (3), C.R.S.

(c) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A COUNTY THAT HAS ALREADY PREPARED A CWPP OR AN EQUIVALENT PLAN AS OF THE EFFECTIVE DATE OF THIS SECTION AND, IN CONNECTION WITH SUCH PREPARATION, CONSIDERED THE GUIDELINES AND CRITERIA ESTABLISHED BY THE STATE FORESTER AND DESIGNATED REPRESENTATIVES PURSUANT TO SECTION 23-31-312 (3), C.R.S., SHALL NOT BE REQUIRED TO PREPARE A NEW CWPP TO SATISFY THE REQUIREMENTS OF THIS SECTION.

SECTION 3. 23-31-309, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

23-31-309. Wildfire emergency response fund - creation - wildfire preparedness fund - creation. (6) PROCEDURES GOVERNING THE DEVELOPMENT, ADOPTION, OR IMPLEMENTATION OF COMMUNITY WILDFIRE PROTECTION PLANS BY COUNTY GOVERNMENTS ARE SPECIFIED IN SECTION 30-15-401.7, C.R.S. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT THE PROVISIONS OF SECTION 30-15-401.7, C.R.S.

SECTION 4. 30-10-512, Colorado Revised Statutes, is amended to read:

30-10-512. Sheriff to act as fire warden. SUBJECT TO THE PROVISIONS OF THE COMMUNITY WILDFIRE PROTECTION PLAN PREPARED BY THE COUNTY IN ACCORDANCE WITH SECTION 30-15-401.7, the sheriff of every county, in addition to other duties, shall act as fire warden of his OR HER respective county in case of prairie or forest fires OR WILDFIRES.

SECTION 5. 30-10-513, Colorado Revised Statutes, is amended to read:

30-10-513. Sheriff in charge of forest or prairie fire or wildfire - expenses. SUBJECT TO THE PROVISIONS OF THE COMMUNITY WILDFIRE PROTECTION PLAN PREPARED BY THE COUNTY IN ACCORDANCE WITH SECTION 30-15-401.7, it is the duty of the sheriff, undersheriffs, and deputies, in case of any forest or prairie fire OR WILDFIRE OCCURRING IN THE UNINCORPORATED AREA OF THE COUNTY, to assume charge thereof or to assist other governmental authorities in such emergencies for controlling or extinguishing such fires, and, for assisting in so doing, they may call to their aid such person as they may deem necessary. The state forester may assume the duty with concurrence of the sheriff. The board of county commissioners of any county may allow the sheriff, undersheriffs, deputies, municipal or county fire departments, fire protection districts, fire authorities, and such other persons as may be called to assist in controlling or extinguishing such fires such compensation and other expenses necessarily incurred as it may deem just. The board of county commissioners of any county in this state may make such appropriation as it may deem proper for the purpose of controlling fires in its county. The board of county commissioners is authorized to levy a special tax subject to approval of the voters upon every dollar of valuation of assessment of the taxable property within the county for the purpose of creating a fund that shall be appropriated, after consultation with representatives of fire departments, fire protection districts, and fire authorities in the county, to prevent, control, or extinguish such fires anywhere in the county and to fix the rate of levy; except that the amount raised from the levy in any one year is limited to the amount raised by one mill or five hundred thousand dollars, whichever is less.

SECTION 6. 32-1-1002 (3) (a), Colorado Revised Statutes, is amended to read:

32-1-1002. Fire protection districts - additional powers and duties. (3) (a) The chief of the fire department in each fire protection district in the state of Colorado, by virtue of such office so held by him OR HER, shall have authority over the supervision of all fires within the district, except as otherwise provided by law, subject to the duties and obligations imposed by this subsection (3) AND SUBJECT TO THE PROVISIONS OF THE COMMUNITY WILDFIRE PROTECTION PLAN PREPARED BY THE COUNTY IN ACCORDANCE WITH SECTION 30-15-401.7, C.R.S., and shall be vested with such other express authority as is contained in this subsection

(3), including commanding the fire department of such district.

SECTION 7. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 4, 2009, if adjournment sine die is on May 6, 2009); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: March 19, 2009

Editor's note: The August 4 date specified in the effective date section of this act reflects the ninetieth day, therefore the act takes effect at 12:01 a.m. on August 5, 2009.