

CHAPTER 110

GOVERNMENT - COUNTY

SENATE BILL 11-110

BY SENATOR(S) Nicholson, Foster, Guzman, Schwartz;
also REPRESENTATIVE(S) Coram, Fischer, Gerou, Hamner, Jones, Kerr J., Labuda, Levy, Peniston, Stephens, Todd, Wilson.

AN ACT

**CONCERNING A REQUIREMENT THAT CERTAIN BOARDS OF COUNTY COMMISSIONERS DEVELOP AN
OPEN BURNING PERMIT SYSTEM FOR THE PURPOSE OF SAFELY DISPOSING OF SLASH.**

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

SECTION 1. Legislative declaration. (1) The general assembly hereby:

(a) Finds that:

(I) The reduction of hazardous fuels on state and private land:

(A) Is beneficial to the safety of the general public by reducing the threat of unwanted wildfire; and

(B) Improves the healthy condition of Colorado's forests;

(II) An element of hazardous fuels reduction is the disposal of slash created by hazardous fuels treatment; and

(III) Piling and burning slash is one effective means of slash disposal;

(b) Determines that:

(I) The use of fire as a tool for the disposal of unwanted slash is most appropriate when accomplished with consideration of measures that contain the fire within a desired location, minimize smoke emissions, mitigate negative impacts to residual live vegetation, and increase the consumption of the unwanted slash;

(II) A permitting system that:

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

(A) Informs landowners of appropriate considerations for the appropriate, safe, and effective use of fire as a tool benefits the landowner, county, and the state;

(B) Reinforces knowledge of local requirements of homeowner association, fire protection districts, and county ordinances increases public awareness and protects the public health, safety, and welfare; and

(c) Declares that this act affects matters of statewide concern and that, while there is a statewide need for a permitting system for open burning, the variability among counties means that such a permitting system must take local conditions into account.

SECTION 2. The introductory portion to 30-15-401 (1) and 30-15-401 (1) (n.5), Colorado Revised Statutes, are amended to read:

30-15-401. General regulations. (1) In addition to those powers granted by sections 30-11-101 and 30-11-107 and by parts 1, 2, and 3 of this article, the board of county commissioners has the power to adopt ordinances for control or licensing of those matters of purely local concern ~~which~~ THAT are described in the following enumerated powers:

(n.5) (I) To ban open fires to a degree and in a manner that the board of county commissioners deems necessary to reduce the danger of wildfires within those portions of the unincorporated areas of the county where the danger of forest or grass fires is found to be high based on competent evidence.

(II) SUBJECT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH (n.5), THE BOARD OF COUNTY COMMISSIONERS IN EACH COUNTY THAT HAS A SUBSTANTIAL FORESTED AREA SHALL, BY JANUARY 1, 2012, DEVELOP AN OPEN BURNING PERMIT SYSTEM FOR THE PURPOSE OF SAFELY DISPOSING OF SLASH. IN DEVELOPING AN OPEN BURNING PERMIT SYSTEM, THE BOARD IS ENCOURAGED TO CONSULT WITH THE COLORADO STATE FOREST SERVICE ESTABLISHED IN SECTION 23-31-302, C.R.S., AND SHALL:

(A) COLLABORATE WITH COUNTY AND LOCAL JURISDICTIONS SUCH AS THE SHERIFF'S OFFICE AND FIRE PROTECTION DISTRICTS, IDENTIFY THE AGENCIES RESPONSIBLE FOR BURNER EDUCATION, PERMITTING, AND COMPLIANCE, AND CONSIDER DEVELOPING AN EDUCATION PLAN TO INFORM PRIVATE PROPERTY OWNERS OF THE BENEFITS, CRITERIA, AND REQUIRED PROCESSES FOR SLASH PILE BURNING;

(B) CONSIDER AND BE CONSISTENT WITH EXISTING LAWS AND PROCESSES THAT BAN, REGULATE, OR HAVE DEVELOPED RECOMMENDATIONS CONCERNING OPEN BURNING, INCLUDING SECTIONS 18-13-109, 18-13-109.5, 23-31-312, 23-31-313 (6) (a) (II) AND (6) (a) (III), 25-7-106 (7) AND (8), 25-7-123, 29-20-105.5, AND 30-11-124, C.R.S.;

(C) CONSIDER EXISTING COUNTY ORDINANCES;

(D) CONSIDER EXISTING SCIENTIFIC AND APPLIED KNOWLEDGE OF SAFE BURNING CONDITIONS, INCLUDING CONSIDERATION OF, AND THE ADVISABILITY OF SPECIFYING PERMIT LIMITATIONS CONCERNING, THE NUMBER OF SLASH PILES THAT MAY BE

BURNED AT ONE TIME PER PERSON WHO IS MONITORING THE BURN, THE SIZE OF SLASH PILES, TEMPERATURE, HUMIDITY, SNOW COVER, WIND CONDITIONS, OVERHEAD AND OTHER TYPES OF ELECTRIC UTILITY FACILITIES, INCLUDING ADEQUATE DISTANCES FROM SUCH FACILITIES, FUEL TYPE AND MOISTURE CONTENT, SLOPE, AND SETBACKS FROM REAL ESTATE IMPROVEMENTS;

(E) EXEMPT BROADCAST BURNS CONDUCTED WITHIN FEDERAL AND STATE GUIDELINES THAT HAVE A WRITTEN PRESCRIBED FIRE PLAN AND AGRICULTURAL BURNS; AND

(F) INCLUDE MECHANISMS TO NOTIFY INDIVIDUALS WITH RESPIRATORY CONDITIONS, IF REQUESTED BY THE INDIVIDUAL, AND CONTIGUOUS LANDOWNERS OF THE DATE, TIME, AND LOCATION OF SLASH PILE BURNS.

(III) NOTHING IN THIS PARAGRAPH (n.5) INFRINGES UPON OR OTHERWISE AFFECTS THE ABILITY OF AGRICULTURAL PRODUCERS TO CONDUCT BURNING ON THEIR PROPERTY.

(IV) A BOARD OF COUNTY COMMISSIONERS THAT HAS AN OPEN BURNING PERMIT SYSTEM ON THE EFFECTIVE DATE OF THIS SUBPARAGRAPH (IV) NEED NOT COMPLY WITH THE REQUIREMENTS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (n.5) UNTIL THE BOARD MATERIALLY ALTERS THE SYSTEM.

(V) For purposes of this paragraph (n.5):

(A) "Competent evidence" ~~may include, but is not limited to,~~ INCLUDES the use of the national fire danger rating system and any other similar indices or information.

(B) "COUNTY THAT HAS A SUBSTANTIAL FORESTED AREA" MEANS A COUNTY THAT HAS AT LEAST FORTY-FOUR PERCENT FOREST COVER AS DETERMINED BY THE STATE FORESTER APPOINTED PURSUANT TO SECTION 23-31-207, C.R.S.

(C) "OPEN BURNING" MEANS FIRE THAT A PERSON STARTS AND THAT IS INTENTIONALLY USED FOR FOREST MANAGEMENT.

(D) "SLASH" MEANS WOODY MATERIAL LESS THAN SIX INCHES IN DIAMETER CONSISTING OF LIMBS, BRANCHES, AND STEMS THAT ARE FREE OF DIRT. "SLASH" DOES NOT INCLUDE TREE STUMPS, ROOTS, OR ANY OTHER MATERIAL.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 13, 2011