

CHAPTER 249

GOVERNMENT - STATE

SENATE BILL 13-083

BY SENATOR(S) Roberts and Nicholson, Aguilar, Cadman, Carroll, Crowder, Grantham, Guzman, Heath, Jahn, Johnston, Jones, Kefalas, Kerr, King, Lambert, Lundberg, Marble, Newell, Renfroe, Scheffel, Schwartz, Tochtrop, Todd, Morse; also REPRESENTATIVE(S) Gerou and Levy, Fields, Ginal, Hamner, Hullinghorst, Kagan, Labuda, Peniston, Rosenthal, Schafer, Singer, Stephens, Young.

AN ACT

CONCERNING THE CREATION OF A PRESCRIBED BURNING PROGRAM UNDER THE DIVISION OF FIRE PREVENTION AND CONTROL IN THE DEPARTMENT OF PUBLIC SAFETY, AND, IN CONNECTION THEREWITH, SPECIFYING THE POWERS AND DUTIES OF THE DIVISION AND ITS DIRECTOR WITH RESPECT TO THAT PROGRAM AND MAKING AN APPROPRIATION.

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

SECTION 1. Short title. This act shall be known and may be cited as the "Colorado Prescribed Burning Act".

SECTION 2. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) Forest land constitutes significant economic, biological, and aesthetic resources of statewide importance;

(b) Colorado's ever-increasing population situates urban development in direct proximity to fire-prone forest lands;

(c) Wildfires threaten public health and safety and can cause catastrophic damage to public and private resources, including clean air, clean water, fish and wildlife habitat, timber resources, forest soils, scenic beauty, recreational opportunities, economic and employment opportunities, and structures and other improvements;

(d) Prescribed burning, which reduces naturally occurring vegetative fuels within a variety of ecosystems, including forests and grasslands, reduces the risk and severity of major wildfire, thereby lessening the threat of fire and the resulting loss

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

of life and property in those areas, including as follows:

(I) When applied to forest lands, prescribed burning serves to reduce hazardous accumulations of fuels, prepare sites for both natural and artificial forest regeneration, improve wildlife habitat, control insects and disease, and perpetuate fire-dependent ecosystems;

(II) When prescribed burning is used to manage fuels in wildland-urban interface areas, it substantially reduces the threat of damaging wildfire in urban communities; and

(III) Prescribed burning promotes resource enhancement when used on private as well as local, state, and federally owned public use lands such as parks, forests, and wildlife refuges; and

(e) Therefore, prescribed burning is a resource protection and land management tool that benefits the safety of the public, Colorado's forest-related resources, the environment, and the economy of the state.

(2) The general assembly further finds and declares that, as Colorado's population continues to grow, a variety of competing interests have placed limitations on prescribed burn activity, thus reducing the aforementioned benefits to the state and its citizens.

(3) The general assembly therefore:

(a) Acknowledges the natural role of fire in forests and other ecosystems, and finds and declares it is in the public interest to use fire as a management tool, under controlled conditions, to reduce the threat of wildfires by maintaining healthy forests and reducing high risk levels of vegetative fuel;

(b) Finds that it is in the public interest to establish and maintain a complete, cooperative, and coordinated wildfire protection and suppression program for the state; and

(c) Declares that the purpose of this act is to authorize and promote the safe, effective, and appropriate use of prescribed burning for community protection, forest health, and environmental and wildlife management purposes, while ensuring that best efforts are undertaken with respect to precautionary measures to assist in confining the fires to a predetermined area.

SECTION 3. In Colorado Revised Statutes, 24-33.5-1201, **amend** (1) (a) as follows:

24-33.5-1201. Division of fire prevention and control - creation - public school construction and inspection section - health facility construction and inspection section - legislative declaration. (1) (a) There is hereby created within the department the division of fire prevention and control. ~~referred to in this part 12 as the "division"~~. The head of the division is the director of the division of fire prevention and control. ~~referred to in this part 12 as the "director"~~. The executive director shall appoint the director pursuant to section 13 of article XII of the state

constitution. ~~The executive director shall appoint~~ Only those persons meeting the qualifications described in paragraph (b) of this subsection (1) ARE ELIGIBLE FOR APPOINTMENT.

SECTION 4. In Colorado Revised Statutes, 24-33.5-1202, **amend** (3.3), (3.4), (3.5), (3.7), and (8); and **add** (3.1), (3.2), (3.6), (3.8), (3.9), (8.3), and (8.4) as follows:

24-33.5-1202. Definitions. As used in this part 12, unless the context otherwise requires:

(3.1) "CERTIFIED PRESCRIBED BURN MANAGER" MEANS AN INDIVIDUAL WHO SUCCESSFULLY COMPLETES THE DIVISION'S CERTIFIED BURNER TRAINING AND CERTIFICATION PROGRAM AND POSSESSES A VALID CERTIFICATION NUMBER.

(3.2) "CIGARETTE" MEANS ANY ROLL FOR SMOKING, WHETHER MADE WHOLLY OR PARTLY OF TOBACCO OR ANY OTHER SUBSTANCE, IRRESPECTIVE OF SIZE OR SHAPE, AND WHETHER OR NOT SUCH TOBACCO OR SUBSTANCE IS FLAVORED, ADULTERATED, OR MIXED WITH ANY OTHER INGREDIENT, THE WRAPPER OR COVER OF WHICH IS MADE OF PAPER OR ANY OTHER SUBSTANCE OR MATERIAL EXCEPT TOBACCO.

~~(3.3) "Cigarette" means any roll for smoking, whether made wholly or partly of tobacco or any other substance, irrespective of size or shape, and whether or not such tobacco or substance is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.~~ "CONTROLLED AGRICULTURAL BURN" MEANS A TECHNIQUE USED IN FARMING OR LIVESTOCK PRODUCTION ON A PARCEL OF LAND THAT MEETS THE DEFINITION OF AGRICULTURAL LAND, AS THAT TERM IS DEFINED IN SECTION 39-1-102 (1.6) (a), C.R.S., TO CLEAR THE LAND OF ANY EXISTING NATIVE VEGETATION OR CROP RESIDUE OR KILL WEEDS AND WEED SEEDS.

~~(3.4) "Cross-connection control device" means an installation, device, or assembly located between the water supply and fire suppression piping to prevent the undesirable reversal in the flow of water from a real or potential source of contamination back to the potable water supply. A cross-connection control device is also referred to as a back flow preventer~~ "CONTROLLED DITCH BURN" MEANS A TECHNIQUE USING FIRE TO CLEAR AND REMOVE VEGETATION, DEBRIS, OR OTHER MATERIAL FROM DITCHES, CANALS, AND OTHER WATER TRANSPORTATION STRUCTURES, INCLUDING BANKS AND ACCESS ROADS.

~~(3.5) "Emergency fire fund" means the emergency fire fund created in section 24-33.5-1220 that was first established in 1967 with voluntary contributions from counties and the Denver water board; administered by a nine-person committee composed of county commissioners, sheriffs, fire chiefs, and the director; and used for the purpose of paying costs incurred as a result of controlling a wildfire by any of parties contributing moneys to the fund, in accordance with the intergovernmental agreement for participation in the Colorado emergency fire fund~~ "CROSS-CONNECTION CONTROL DEVICE" MEANS AN INSTALLATION, DEVICE, OR ASSEMBLY LOCATED BETWEEN THE WATER SUPPLY AND FIRE SUPPRESSION PIPING TO PREVENT THE UNDESIRABLE REVERSAL IN THE FLOW OF WATER FROM A REAL OR POTENTIAL SOURCE OF CONTAMINATION BACK TO THE POTABLE WATER SUPPLY. A

CROSS-CONNECTION CONTROL DEVICE IS ALSO REFERRED TO AS A BACK FLOW PREVENTER.

(3.6) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION.

(3.7) ~~"Fire department" means the duly authorized fire protection organization of a town, city, county, or city and county, a fire protection district, or a metropolitan district or county improvement district that provides fire protection.~~ "DIVISION" MEANS THE DIVISION OF FIRE PREVENTION AND CONTROL IN THE DEPARTMENT OF PUBLIC SAFETY CREATED IN THIS ARTICLE.

(3.8) "EMERGENCY FIRE FUND" MEANS THE EMERGENCY FIRE FUND CREATED IN SECTION 24-33.5-1220 THAT WAS FIRST ESTABLISHED IN 1967 WITH VOLUNTARY CONTRIBUTIONS FROM COUNTIES AND THE DENVER WATER BOARD; ADMINISTERED BY A NINE-PERSON COMMITTEE COMPOSED OF COUNTY COMMISSIONERS, SHERIFFS, FIRE CHIEFS, AND THE DIRECTOR; AND USED FOR THE PURPOSE OF PAYING COSTS INCURRED AS A RESULT OF CONTROLLING A WILDFIRE BY ANY OF THE PARTIES CONTRIBUTING MONEYS TO THE FUND, IN ACCORDANCE WITH THE INTERGOVERNMENTAL AGREEMENT FOR PARTICIPATION IN THE EMERGENCY FIRE FUND.

(3.9) "FIRE DEPARTMENT" MEANS THE DULY AUTHORIZED FIRE PROTECTION ORGANIZATION OF A TOWN, CITY, COUNTY, OR CITY AND COUNTY, A FIRE PROTECTION DISTRICT, OR A METROPOLITAN DISTRICT OR COUNTY IMPROVEMENT DISTRICT THAT PROVIDES FIRE PROTECTION.

(8) ~~"Principal" means an individual having a position of responsibility in any entity acting as a fire suppression contractor, including but not limited to any manager, director, officer, partner, owner, or shareholder owning ten percent or more of the stocks of any such entity.~~ "MASTICATED FUELS" MEANS FUELS, SUCH AS BRUSH, SMALL-DIAMETER TREES, AND SLASH, THAT HAVE BEEN GROUND OR CHEWED INTO SMALL PIECES OF WOODY MATERIAL THROUGH A MECHANICAL WILDLAND FUELS TREATMENT PROCESS, AND GENERALLY LEFT TO CARPET THE GROUND.

(8.3) "PRESCRIBED BURNING" MEANS THE APPLICATION OF FIRE, IN ACCORDANCE WITH A WRITTEN PRESCRIPTION FOR VEGETATIVE FUELS, UNDER SPECIFIED ENVIRONMENTAL CONDITIONS WHILE FOLLOWING APPROPRIATE PRECAUTIONARY MEASURES THAT ENSURE PUBLIC SAFETY AND THAT IS CONFINED TO A PREDETERMINED AREA TO ACCOMPLISH PUBLIC SAFETY OR LAND MANAGEMENT OBJECTIVES. THE TERM EXCLUDES CONTROLLED AGRICULTURAL BURNS AND CONTROLLED DITCH BURNS.

(8.4) "PRINCIPAL" MEANS AN INDIVIDUAL HAVING A POSITION OF RESPONSIBILITY IN ANY ENTITY ACTING AS A FIRE SUPPRESSION CONTRACTOR, INCLUDING ANY MANAGER, DIRECTOR, OFFICER, PARTNER, OWNER, OR SHAREHOLDER OWNING TEN PERCENT OR MORE OF THE STOCKS OF ANY SUCH ENTITY.

SECTION 5. In Colorado Revised Statutes, 24-33.5-1203, **add** (1)(t) as follows:

24-33.5-1203. Duties of division. (1) The division shall perform the following duties:

(t) IMPLEMENT A PRESCRIBED BURNING PROGRAM, INCLUDING CONDUCTING PRESCRIBED BURNING ON ANY AREA IN THE STATE PURSUANT TO SECTION 24-33.5-1217. THE DIVISION SHALL CONDUCT SUCH PRESCRIBED BURNING PROGRAM IN COOPERATION WITH LOCAL, STATE, OR FEDERAL AGENCIES, PRIVATE PERSONS, OR CONCERNS.

SECTION 6. In Colorado Revised Statutes, 24-33.5-1217, **amend** (2) introductory portion, (2) (e), (3), and (4); and **add** (5), (6), (7), (8), (9), (10), and (11) as follows:

24-33.5-1217. Prescribed burning program - training and certification of prescribed burn managers - rules - fees. (2) The TRAINING AND CERTIFICATION standards adopted under this section shall:

(e) Establish training standards for certified burners AND UTILIZE ALL MEANS AVAILABLE TO MAKE THE CERTIFIED BURNER TRAINING AS ACCESSIBLE AS POSSIBLE; and

(3) (a) ~~Nothing in this section requires~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ON AND AFTER DECEMBER 1, 2013, a ~~user of prescribed fire to~~ **user of prescribed fire to** MUST BE ATTENDED BY A PERSON **certified by the division** PURSUANT TO THIS SECTION AND RULES PROMULGATED THERETO OR OTHERWISE AUTHORIZED UNDER SECTION 24-33.5-1217.5 (1) (c).

(b) (I) NOTHING IN THIS SECTION REQUIRES A PRIVATE LANDOWNER TO BE CERTIFIED BY THE DIVISION AS A PRESCRIBED BURN MANAGER OR QUALIFIED BY NATIONAL WILDFIRE COORDINATING GROUP STANDARDS AS A PRESCRIBED BURN BOSS TO CONDUCT PRESCRIBED FIRE ON THEIR OWN PROPERTY.

(II) A PRIVATE LANDOWNER OR THE LANDOWNER'S DESIGNEE WHO IS CERTIFIED BY THE DIVISION AS A PRESCRIBED BURN MANAGER OR QUALIFIED BY NATIONAL WILDFIRE COORDINATING GROUP STANDARDS AS A PRESCRIBED BURN BOSS IS NOT LIABLE FOR ANY CIVIL DAMAGES FOR ACTS OR OMISSIONS MADE IN GOOD FAITH RESULTING IN DAMAGE OR INJURY CAUSED BY FIRE OR SMOKE RESULTING FROM PRESCRIBED BURNS THEY CONDUCT ON THEIR OWN PROPERTY AND IN COMPLIANCE WITH APPLICABLE STATE LAWS AND LOCAL ORDINANCES, UNLESS SUCH PRIVATE LANDOWNER'S OR DESIGNEE'S ACTS OR OMISSIONS ARE GROSSLY NEGLIGENT OR WILLFUL AND WANTON.

(III) NOTHING IN THIS SECTION EXEMPTS PRIVATE LANDOWNERS FROM COMPLYING WITH ANY OTHER APPLICABLE LOCAL, STATE, OR FEDERAL REQUIREMENTS PERTAINING TO OPEN BURNING.

(4) ~~As used in this section, unless the context otherwise requires:~~ THE DIRECTOR, BY RULE, MAY ESTABLISH A FEE AT AN AMOUNT NOT TO EXCEED THE AMOUNT REQUIRED TO RECOVER ALL DIRECT COSTS THAT THE DIVISION INCURS IN PROVIDING TRAINING TO AND PROCESSING APPLICATIONS FOR PERSONS SEEKING CERTIFICATION AS CERTIFIED PRESCRIBED BURN MANAGERS PURSUANT TO THIS SECTION. ANY FEES SO COLLECTED SHALL BE DEPOSITED INTO THE FIREFIGHTER, FIRST RESPONDER, HAZARDOUS MATERIALS RESPONDER, AND PRESCRIBED FIRE TRAINING AND CERTIFICATION FUND CREATED IN SECTION 24-33.5-1207.

~~(a) "Controlled agricultural burn" means a technique used in farming to clear the land of any existing crop residue, kill weeds and weed seeds, or reduce fuel buildup and decrease the likelihood of a future fire.~~

~~(b) "Natural ignition fires" mean wildland fires that are ignited by lightning or some other natural source.~~

~~(c) "Prescribed burning" means the application of fire, in accordance with a written prescription for vegetative fuels, under specified environmental conditions while following appropriate precautionary measures that ensures public safety and that the fire is confined to a predetermined area to accomplish planned fire or land management objectives. The term excludes controlled agricultural burns.~~

(5) (a) THE DIRECTOR, IN CONSULTATION WITH THE COLORADO STATE FOREST SERVICE AS DESCRIBED IN PART 3 OF ARTICLE 31 OF TITLE 23, C.R.S., AND IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE:

(I) MAY ADOPT ANY SUCH RULES AS THE DIRECTOR DEEMS NECESSARY TO ADMINISTER THE PRESCRIBED BURNING PROGRAM WITHIN THE DIVISION; AND

(II) SHALL ADOPT RULES AND STANDARDS:

(A) PERTAINING TO THE TRAINING AND CERTIFICATION OF PRESCRIBED BURN MANAGERS, INCLUDING TRAINING COMPONENTS; APPLICATION PROCESSES; QUALIFICATION FOR AND TERMS AND DURATIONS OF CERTIFICATION; TYPES OF CERTIFICATION, IF APPLICABLE; GROUNDS AND PROCESSES FOR RENEWAL, SUSPENSION, AND REVOCATION OF CERTIFICATIONS; AND TRAINING, CERTIFICATION, AND RENEWAL FEES; AND

(B) FOR THE USE OF PRESCRIBED BURNING OCCURRING ON STATE LANDS OR CONDUCTED BY STATE AGENCIES ON PRIVATE LANDS, PURSUANT TO SECTION 24-33.5-1217.5.

(b) THE RULES AND STANDARDS PROMULGATED PURSUANT TO SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (5) CONSTITUTE THE MINIMUM STANDARDS FOR ALL PRESCRIBED BURNING CONDUCTED IN THE STATE, EXCEPT FOR PRESCRIBED BURNING CONDUCTED BY AN AGENCY OF THE FEDERAL GOVERNMENT. TO BE EXEMPT FROM THESE STANDARDS, OTHER USERS OF PRESCRIBED FIRE, INCLUDING LOCAL GOVERNMENTS AND NONGOVERNMENTAL ORGANIZATIONS MUST ADOPT OR HAVE ALREADY ADOPTED GUIDELINES OR STANDARDS THAT ARE IN SUBSTANTIAL COMPLIANCE WITH THE INTENT OF SECTION 24-33.5-1217.5 FOR PRESCRIBED BURNING UNDER THEIR CONTROL.

(6) (a) SUBJECT TO THE PROVISIONS OF PARAGRAPH (c) OF THIS SUBSECTION (6), THE DIRECTOR MAY ENTER INTO AN AGREEMENT WITH AN OWNER OR OTHER PERSON HAVING LEGAL CONTROL OF PROPERTY, INCLUDING A PUBLIC AGENCY WITH REGULATORY OR NATURAL RESOURCE MANAGEMENT AUTHORITY OVER ANY SUCH PROPERTY, FOR THE USE OF PRESCRIBED BURNING CONSISTENT WITH THIS ARTICLE TO PREVENT HIGH-INTENSITY WILDLAND FIRES BY REDUCING THE VOLUME AND CONTINUITY OF WILDLAND FUELS OR TO ACHIEVE OTHER GOALS, INCLUDING FOREST

IMPROVEMENT, CONSISTENT WITH THIS ARTICLE.

(b) THE DIRECTOR SHALL NOT ENTER INTO AN AGREEMENT FOR PRESCRIBED BURNING PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (6) UNLESS THE DIRECTOR FIRST DETERMINES THAT THE PROPERTY OWNER OR OTHER PERSON HAVING LEGAL CONTROL OF THE PROPERTY HAS BOTH EVALUATED ALL ALTERNATIVES TO PRESCRIBED BURNING AND CONCLUDED THAT PRESCRIBED BURNING IS AN APPROPRIATE HAZARDOUS FUEL REDUCTION METHOD FOR THE PROPERTY.

(c) NOTHING IN THIS SECTION COMPELS ANY PERSON TO ENTER INTO AN AGREEMENT WITH THE DIRECTOR.

(d) (I) WHERE AN AGENCY OF THE FEDERAL GOVERNMENT ASSUMES PRIMARY RESPONSIBILITY FOR CONDUCTING A PRESCRIBED BURN IN THE STATE, NEITHER THE AGENCY NOR ANY OTHER AGENCY OF THE FEDERAL GOVERNMENT IS REQUIRED TO COMPLY WITH THE RULES AND STANDARDS PROMULGATED PURSUANT TO SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (5) OF THIS SECTION.

(II) IF THE DIRECTOR HAS ENTERED INTO AN AGREEMENT WITH AN AGENCY OF THE FEDERAL GOVERNMENT AS OF THE EFFECTIVE DATE OF THIS SECTION OF THE TYPE DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (6), NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE A NEW AGREEMENT OR MODIFICATION OF AN EXISTING AGREEMENT.

(7) (a) THE DIVISION SHALL COOPERATE WITH AND PROVIDE ADVISORY SERVICES TO ANY PERSON DESIRING TO USE PRESCRIBED BURNING, THE OBJECTIVE OF WHICH IS THE PREVENTION OF HIGH-INTENSITY WILDLAND FIRES, WATERSHED MANAGEMENT, VEGETATION MANAGEMENT, FOREST IMPROVEMENT, WILDLIFE HABITAT IMPROVEMENT, OR ANY OTHER OBJECTIVE THAT IS DEEMED TO BE IN THE PUBLIC INTEREST, OR ANY COMBINATION OF SUCH OBJECTIVES.

(b) THE DIVISION SHALL PROVIDE INFORMATION AND TECHNICAL ASSISTANCE TO UNITS OF LOCAL GOVERNMENT, UPON REQUEST FROM THE LOCAL GOVERNMENT, CONCERNING PRESCRIBED BURNING.

(c) THE DIVISION MAY PROVIDE STANDBY FIRE PROTECTION TO ANY PERSON USING PRESCRIBED BURNING IN A MANNER DEEMED TO BE IN THE PUBLIC INTEREST, TO SUCH EXTENT AS PERSONNEL, FIRE CREWS, AND FIREFIGHTING EQUIPMENT ARE REQUESTED AND AVAILABLE.

(8) THE DIVISION SHALL, SUBJECT TO SUFFICIENT FUNDING, INSTITUTE A PUBLIC INFORMATION CAMPAIGN TO PROMOTE TO THE GENERAL PUBLIC THE BENEFITS OF PRESCRIBED BURNING.

(9) NOTHING IN THIS ARTICLE GRANTS THE DIVISION AUTHORITY OVER ANY HAZARDOUS FUEL REDUCTION OTHER THAN PRESCRIBED BURNING. FOREST HEALTH, FOREST IMPROVEMENT, VEGETATION AND WATERSHED MANAGEMENT, AND HAZARDOUS FUEL REDUCTION OTHER THAN PRESCRIBED BURNING REMAIN RESPONSIBILITIES VESTED IN THE STATE FOREST SERVICE.

(10) NOTWITHSTANDING ANY OTHER PROVISION OF LAW:

(a) IN PERFORMING THE DUTIES ASSIGNED TO HIM OR HER UNDER SUBSECTIONS (5) AND (6) OF THIS SECTION, THE DIRECTOR SHALL CONSULT WITH THE COLORADO STATE FOREST SERVICE AS DESCRIBED IN PART 3 OF ARTICLE 31 OF TITLE 23, C.R.S.

(b) THE PRESCRIBED BURNING STANDARDS ADOPTED BY THE DIRECTOR PURSUANT TO SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (5) OF THIS SECTION SHALL 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) NOTHING IN THIS SECTION OR SECTION 24-33.5-1217.5 OR 24-33.5-1217.7 SHALL BE CONSTRUED TO AFFECT THE AUTHORITY OF A COUNTY GOVERNMENT TO DEVELOP OR ADMINISTER AN OPEN BURNING PERMIT SYSTEM FOR THE PURPOSE OF SAFELY DISPOSING OF SLASH IN ACCORDANCE WITH THE PROVISIONS OF SECTION 30-15-401 (1) (n.5), C.R.S.

(11) EXCEPT AS OTHERWISE PROVIDED FOR THE FEES ESTABLISHED AND COLLECTED PURSUANT TO SUBSECTION (4) OF THIS SECTION, ALL MONEYS RECEIVED BY THE DIVISION PURSUANT TO THIS SECTION SHALL BE CREDITED TO THE WILDLAND FIRE COST RECOVERY FUND CREATED IN SECTION 24-33.5-1220 (4).

SECTION 7. In Colorado Revised Statutes, **add** 24-33.5-1217.5 and 24-33.5-1217.7; and **add with amended and relocated provisions** 24-33.5-1217.3 as follows:

24-33.5-1217.3. [Formerly 24-33-203 and 24-33-204] Authority to permit controlled burns during drought conditions - civil - criminal. The ~~state forester~~ DIVISION may provide written authority to persons seeking to conduct prescribed or controlled fires, such as grassland, forest, or habitat management activities, during drought conditions as specified in section 13-21-105 (2) or 18-13-109 (2) (b) (III), C.R.S. In issuing written authority for prescribed or controlled fires, the ~~state forester~~ DIVISION shall ~~be in conformity with~~ CONFORM TO and shall not supersede any state or local bans on fires.

24-33.5-1217.5. Minimum prescribed burning standards. (1) THE PRESCRIBED BURNING STANDARDS ADOPTED BY THE DIRECTOR PURSUANT TO SECTION 24-33.5-1217 (5) (a) (II) (B) MUST, AT A MINIMUM:

(a) ENSURE THAT PRESCRIBED BURNING IS THE CONTROLLED APPLICATION OF FIRE TO VEGETATIVE FUELS UNDER SPECIFIED ENVIRONMENTAL CONDITIONS IN ACCORDANCE WITH A WRITTEN PRESCRIPTION PLAN, WHICH PLAN:

(I) IS DESIGNED TO CONFINE THE FIRE TO A PREDETERMINED AREA;

(II) IS DESIGNED TO ACCOMPLISH PLANNED LAND MANAGEMENT OBJECTIVES, AS THOSE OBJECTIVES ARE DETERMINED BY THE PROPERTY OWNER OR NATURAL RESOURCE MANAGEMENT AUTHORITY; AND

(III) CONFORMS TO THIS ARTICLE AND THE RULES AND STANDARDS ADOPTED IN ACCORDANCE WITH THIS ARTICLE;

(b) INCLUDE INFORMATION ON PLANNING, PREPARING, AND IMPLEMENTING SAFE, EFFECTIVE PRESCRIBED BURNING, WHICH INFORMATION:

(I) IS BASED ON THE "INTERAGENCY PRESCRIBED FIRE PLANNING AND IMPLEMENTATION PROCEDURES GUIDE", AS AMENDED, PUBLISHED BY THE NATIONAL WILDFIRE COORDINATING GROUP, OR BY ANY SUCCESSOR GROUP; AND

(II) CONTAINS SPECIFIC CRITERIA WITH RESPECT TO MASTICATED FUELS;

(c) REQUIRE AT LEAST ONE PERSON, WHO MUST BE EITHER CERTIFIED BY THE DIVISION AS A PRESCRIBED BURN MANAGER OR QUALIFIED BY NATIONAL WILDFIRE COORDINATING GROUP STANDARDS AS A PRESCRIBED BURN BOSS AT THE LEVEL COMMENSURATE WITH THE COMPLEXITY OF THE BURN, TO BE PRESENT ON SITE:

(I) DURING THE CONDUCT OF THE PRESCRIBED BURN; AND

(II) (A) UNTIL THE FIRE IS ADEQUATELY CONFINED TO REASONABLY PREVENT ESCAPE OF THE FIRE FROM THE AREA INTENDED TO BE BURNED; OR

(B) UNTIL THE PRESCRIBED BURNING IS COMPLETED AND ALL FIRE IS DECLARED TO BE OUT;

(d) ESTABLISH APPROPRIATE GUIDELINES SUFFICIENT TO:

(I) CONDUCT THE BURN IN ACCORDANCE WITH THE PRESCRIPTION PLAN; AND

(II) PROVIDE ADEQUATE PROTECTION FOR THE SAFETY OF PERSONS AND OF ADJACENT PROPERTY;

(e) EVALUATE ALTERNATIVES TO PRESCRIBED BURNING, SUCH AS MECHANICAL TREATMENT, AND GUIDE THE USER THROUGH THE SAFE AND PRUDENT APPLICATION OF PRESCRIBED BURNING, WHEN IT IS DETERMINED TO BE AN APPROPRIATE METHOD; AND

(f) SET FORTH REQUIREMENTS FOR RECORDKEEPING; PUBLIC INFORMATION CAMPAIGNS; AND TIMELY NOTICE OF PRESCRIBED BURNING TO ADJACENT LANDOWNERS, LOCAL AUTHORITIES, AND, TO THE EXTENT PRACTICABLE, POTENTIALLY AFFECTED NEIGHBORS.

(2) ALL USERS OF PRESCRIBED FIRE SHALL COMPLY WITH THE APPLICABLE PROVISIONS OF THE "COLORADO AIR POLLUTION PREVENTION AND CONTROL ACT", PART 1 OF ARTICLE 7 OF TITLE 25, C.R.S., AND ITS IMPLEMENTING REGULATIONS, AND SHALL OBTAIN A PERMIT FOR PRESCRIBED FIRE PURSUANT TO SECTION 25-7-123, C.R.S.

(3) THE RULES AND STANDARDS ADOPTED BY THE DIRECTOR MUST BE PROMULGATED IN CONSULTATION WITH THE COLORADO STATE FOREST SERVICE AS DESCRIBED IN PART 3 OF ARTICLE 31 OF TITLE 23, C.R.S., THE COLORADO

PRESCRIBED FIRE COUNCIL, OR AN ANALOGOUS SUCCESSOR ORGANIZATION, AND OTHER SUBJECT MATTER EXPERTS AS THE DIRECTOR DEEMS APPROPRIATE. IN PROMULGATING SUCH RULES AND STANDARDS, THE DIRECTOR SHALL CONSIDER THE CURRENT STATE OF RESEARCH AND BEST MANAGEMENT PRACTICES FOR PRESCRIBED BURNING.

24-33.5-1217.7. Escaped prescribed fires. (1) IF A PRESCRIBED FIRE EXCEEDS THE CONTROL CAPABILITY OF ON-SITE RESOURCES, THE FIRE IS DEEMED TO BE ESCAPED AND CONTINGENCY ACTIONS SHALL BE TAKEN IMMEDIATELY TO BRING THE ESCAPE UNDER CONTROL.

(2) THE DIVISION SHALL CONDUCT OR CAUSE TO BE CONDUCTED A FORMAL REVIEW FOLLOWING ESCAPE OF A PRESCRIBED FIRE. THE PURPOSE OF THE REVIEW IS TO IDENTIFY THE FACTORS THAT CONTRIBUTED TO THE ESCAPE, INCLUDING COMPLIANCE WITH POLICY REQUIREMENTS, IN AN EFFORT TO REDUCE THE OCCURRENCE OR PREVENT FUTURE ESCAPES.

(3) WILDFIRES BURNING UNCONTROLLED ON FORESTED, BRUSH, OR GRASSLAND AREAS THAT POSE A HAZARD TO LIFE AND PROPERTY CONSTITUTE A PUBLIC NUISANCE. EMPLOYEES OR AGENTS OF THE DIVISION HAVE THE RIGHT TO ENTER LAND TO CONTROL, SUPPRESS, OR INVESTIGATE WILDFIRES WITHOUT LIABILITY FOR TRESPASS.

(4) IN ORDER TO PREVENT HIGH-INTENSITY OR CATASTROPHIC WILDLAND FIRES, LOCAL, STATE, OR FEDERAL FIREFIGHTERS MAY ENTER LANDS AND CONSTRUCT FIRE LINES OR FIRE BREAKS TO PREVENT FURTHER SPREAD OF WILDFIRES, WITHOUT LIABILITY FOR TRESPASS.

SECTION 8. In Colorado Revised Statutes, 13-21-105, **amend** (2) (b) (II) as follows:

13-21-105. Damages from fire set in woods or prairie - treble damages during drought conditions. (2) (b) (II) ~~The provisions of Paragraph (a) of this subsection (2) shall~~ DOES NOT APPLY TO ANY OTHER PERSON SEEKING TO CONDUCT OTHER PRESCRIBED OR CONTROLLED FIRES SUCH AS GRASSLAND, FOREST, OR HABITAT MANAGEMENT ACTIVITIES, IF SUCH PERSON HAS FIRST OBTAINED WRITTEN AUTHORITY FROM THE ~~state forester~~ DIRECTOR OF THE DIVISION OF FIRE PREVENTION AND CONTROL IN THE DEPARTMENT OF PUBLIC SAFETY.

SECTION 9. In Colorado Revised Statutes, 18-13-109, **amend** (2) (b) introductory portion and (2) (b) (III) as follows:

18-13-109. Firing woods or prairie. (2) (b) The following activities ~~shall~~ DO NOT BE CONSTITUTE offenses under this subsection (2):

(III) LAWFULLY CONDUCTED prescribed or controlled fires ~~conducted with written authority from the state forester~~ BURNS;

SECTION 10. In Colorado Revised Statutes, 23-31-313, **amend** (6) (a) (II) as follows:

23-31-313. Healthy forests - vibrant communities - funds created - repeal.

(6) **Community watershed restoration.** (a) In order to support communities and land managers in moving from risk reduction to long-term ecological restoration so that the underlying condition of Colorado's forests supports a variety of values, particularly public water supply and high-quality wildlife habitat, the forest service shall:

(II) Facilitate and work collaboratively with THE DIVISION OF FIRE PREVENTION AND CONTROL, landowners, local governments, including conservation districts created pursuant to article 70 of title 35, C.R.S., and county noxious weed program administrators and other appropriate parties, including any electric, gas, and water utilities in the affected area, to design and safely implement prescribed fire projects and to encourage increased responsible use of prescribed fire as a tool for restoring healthy forest conditions consistent with programs established pursuant to section 25-7-106 (7) and (8), C.R.S., AND SECTION 24-33.5-1217, C.R.S. The forest service shall emphasize providing training and technical assistance for landowners, local communities, and state agencies.

SECTION 11. In Colorado Revised Statutes, 24-33.5-1204, **amend** (3) as follows:

24-33.5-1204. Voluntary education and training program - voluntary certification of firefighters, first responders, and hazardous materials responders - advisory board. (3) The advisory board shall meet as determined necessary by the chairperson or the director. The members of the advisory board shall receive no compensation but shall be reimbursed for necessary travel and other expenses actually incurred in the performance of their official duties. The expenses shall be paid from the firefighter, first responder, and hazardous materials responder, AND PRESCRIBED FIRE TRAINING AND certification fund created in section 24-33.5-1207.

SECTION 12. In Colorado Revised Statutes, 24-33.5-1205, **amend** (1) (g) as follows:

24-33.5-1205. Duties of the director and the advisory board. (1) The director has the following duties relating to the voluntary firefighter, first responder, and hazardous materials responder certification programs and the fire service education and training program:

(g) To establish fees for the actual direct and indirect costs of the administration of the firefighter, first responder, and hazardous materials responder certification programs, which fees shall be assessed against any person participating in such programs. All fees collected shall be credited to the firefighter, first responder, and hazardous materials responder, AND PRESCRIBED FIRE TRAINING AND certification fund created in section 24-33.5-1207.

SECTION 13. In Colorado Revised Statutes, 24-33.5-1207, **amend** (1) as follows:

24-33.5-1207. Firefighter, first responder, hazardous materials responder, and prescribed fire training and certification fund - created. (1) All moneys

received by the director pursuant to the coordination and administration of the firefighter, first responder, ~~and~~ hazardous materials responder, AND PRESCRIBED FIRE TRAINING AND certification programs and all interest earned on the moneys shall be deposited in the state treasury in the firefighter, first responder, ~~and~~ hazardous materials responder, AND PRESCRIBED FIRE TRAINING AND certification fund, which fund is hereby created, and the moneys shall be used, subject to annual appropriations by the general assembly, for the purposes set forth in this part 12 and shall not be deposited in or transferred to the general fund of the state of Colorado or any other fund.

SECTION 14. In Colorado Revised Statutes, 24-33.5-1211, **amend** (4) as follows:

24-33.5-1211. Inspector certification. (4) The director of the division shall establish a fee to cover the actual direct and indirect costs of processing applications and issuing and renewing certifications pursuant to this section. Certification fees collected by the division shall be credited to the firefighter, first responder, ~~and~~ hazardous materials responder, AND PRESCRIBED FIRE TRAINING AND certification fund created in section 24-33.5-1207.

SECTION 15. In Colorado Revised Statutes, 30-11-124, **amend** (1) as follows:

30-11-124. Fire planning authority. (1) The board of county commissioners of each county in the state, subject to the requirements of section 25-7-123, C.R.S., may prepare, adopt, and implement a county fire management plan that details individual county policies on fire management for prescribed burns, fuels management, or natural ignition burns on lands owned by the state or county. Such plans shall be developed in coordination with the county sheriff, the ~~Colorado state forest service~~ DIVISION OF FIRE PREVENTION AND CONTROL IN THE DEPARTMENT OF PUBLIC SAFETY, and the appropriate state and local governmental entities. All interested parties shall have the opportunity to comment on the plan prior to its adoption and implementation.

SECTION 16. Repeal of provisions being relocated in this act. In Colorado Revised Statutes, **repeal** 24-33-203 and 24-33-204.

SECTION 17. Appropriation. (1) The general assembly anticipates that, for the fiscal year beginning July 1, 2013, the department of public safety, executive director's office, will receive the sum of \$4,635 in federal funds for the purchase of legal services related to the implementation of this act. Although these funds are not appropriated in this act, they are noted for the purpose of indicating the assumptions used relative to these funds.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2013, the sum of \$4,635, or so much thereof as may be necessary, for the provision of legal services for the department of public safety related to the implementation of this act. Said sum is from reappropriated funds received from the department of public safety out of the appropriation made in subsection (1) of this section.

SECTION 18. 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: May 23, 2013