Economic Affairs Interim Committee
62nd Montana Legislature

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January 6, 2012

Memo

To: **Economic Affairs Committee Members**
From: **Pat Murdo, committee staff**
Re: **Rural Volunteer Firefighter Concerns regarding Workers' Compensation**

Issue: As presented at the June 2011 meeting of the Economic Affairs Committee in a review of HJR 38 by Harold Blattie of the Montana Association of Counties (MACO) and Mary Sexton, director of the Department of Natural Resources and Conservation (DNRC), rural firefighters do not always have workers' compensation. However, a county that signs a cooperative equipment agreement with the DNRC is agreeing that a firefighter who uses DNRC-provided equipment will have workers' compensation coverage.

DNRC relies on rural volunteer firefighters to help jumpstart attacks on wildland fires. Without volunteers' nearby presence, the DNRC crews may lose valuable time in responding to fires. An initial attack on a fire is considered in everyone's best interest.

However, the costs of workers' compensation for volunteer firefighters is not cheap (estimated at $12.60 for each $100 worth of payroll for covering each volunteer. One estimate put the number of firefighters and firefighting volunteers at 5,000. Under 39-71-118 there are provisions for calculating volunteer firefighters' payroll).

Key questions are:

- Who pays for coverage, particularly when there is not enough critical mass to help bring the costs of coverage down?
- What happens if a volunteer firefighter is without coverage and ends up in the 5% risk category for being catastrophically injured on the job (10 wildland firefighters died in the United States in 2011)?
- Who is liable if a rural firefighter is injured and the agreement has been signed, but there is no workers' compensation coverage?

The issue is complicated by having:

- various types of firefighting companies, estimated at 420 departments or companies across the state. There are some rural county volunteers covered by the Montana Municipal Interlocal Authority (MMIA). There are special districts not covered by MMIA. MACO sees problems with some counties being able to cover the cost because they are at or near the cap imposed on levies under 15-10-420, MCA.
- an existing surtax on the fire portion of insurance premiums under 50-3-109, MCA. That statute says that, after deduction of cancellations and return premiums, a tax of 2.5% must be deposited in the general fund in addition to other taxes required. The state auditor then shifts 5% of the amount attributed to fire risks and other risks listed in 50-3-109 into either a pension trust fund for the Firefighters Unified Retirement

System under 19-17-301or a fire department relief association under 19-18-512, MCA.

- disability income insurance authorized for some local government volunteer firefighters, which depends on a locally voted levy (which through a vote can avoid the 15-10-420 limits under 15-10-425, MCA). The amount levied can be used for workers' compensation but also used to pay for disability, which covers the lesser of one year or until a treating physician determines no further disability.

Proposals: A work group discussion on November 9, 2011, included workers' compensation insurers and regulators, MACO, DNRC, and representatives of the firefighters' retirement system, which handles the disability income insurance/retirement issues.

Proposals presented to the work group, along with examples of what other states are doing, include:

- Exempting the levies for firefighter disability income or a workers' compensation levy for volunteer firefighters from a county's limit under 15-10-420, MCA.
- Increasing the fire premium tax to provide a special purpose account that counties could access to cover volunteer firefighters' work comp premiums. This is intended to subject homes in the wildland-urban interface to higher premiums than homes within coverage areas paid for by cities, towns, counties, or other local government entities. It is not quite the same as a bill in the 2009 Legislature to promote premium discounts for fire mitigation hazards, SB 145.
- Requiring the state to budget adequate funds to DNRC to cover volunteer firefighters under its workers' compensation policy. In North Carolina, state general revenues contribute to a Volunteer Safety Workers' Compensation Fund set up in the late 1990s to help offset the costs of workers' compensation premiums for volunteer safety workers who also contribute to premiums. An article in the online *Insurance Journal* noted that in May 2011 the North Carolina legislature was considering contributing only half the amount ($1 million) needed to keep the fund solvent.
- The California Board of Forestry and Fire Protection in November 2011 approved an annual $150 fee on rural property owners and provided a $35 discount for property already located in a local fire district. *State Tax News and Analysis* reported that the new fee is prompting threats of a lawsuit because some consider the fee a tax, which would have required a two-thirds majority approval.

Acreage Burned in Selected Western State Fires, 2011 (Wikipedia source for Texas information)

State	*Acreage Burned in Largest Fires or Overall*	*Homes Burned*
Arizona	Wallow Fire burns 538,000 acres Horseshoe fire burns 222,954 acres	57 in Monument Fire (30,526 acres)
Montana	Diamond Complex (Custer Nat'l Forest) 52,710 acres Saddle Complex (on Idaho state line) 32,769 acres	Unknown
New Mexico	More than 1,000 fires burned 967,000 acres	Unknown (3 in Sacramento Mntns)
Texas	27,976 fires burned more than 3,959,040 acres	2,862 homes/ 2,700 other structure 2 firefighters and 2 people died