

Colorado Legislative Council Staff Fiscal Note
**STATE and LOCAL
 FISCAL IMPACT**

Drafting Number: LLS 12-0964 **Date:** May 3, 2012
Prime Sponsor(s): Rep. Gardner B.; Gerou **Bill Status:** House Appropriations
 Sen. Cadman; Nicholson **Fiscal Analyst:** Alex Schatz (303-866-4375)

TITLE: CONCERNING CLAIMS AGAINST THE STATE ARISING UNDER THE "COLORADO GOVERNMENTAL IMMUNITY ACT".

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue		
State Expenditures	See State Expenditures section.	
FTE Position Change		
Effective Date: Upon signature of the Governor, or upon becoming law without his signature. The bill applies to claims asserted against the state on or after January 1, 2012.		
Appropriation Summary for FY 2012-2013: None required.		
Local Government Impact: None.		

This fiscal note is preliminary. Many state agencies have yet to respond to the fiscal note analysis. The fiscal note will be revised as appropriate with the receipt of additional information.

Summary of Legislation

Under current law, state and local government agencies in Colorado may defend negligence and other tort claims on the basis of limited immunity under the Colorado Governmental Immunity Act (CGIA). The CGIA caps damage recoveries at \$150,000 for the claim on any individual party and a total recovery of \$600,000 for any single occurrence. Currently, the CGIA authorizes the General Assembly to pass a bill modifying the maximum recovery for any specific judgment or judgments that exceed the statutory maximum amounts and directs that this recovery be paid from the General Fund.

This bill amends the CGIA to specifically waive sovereign immunity in legal actions against the state arising from a dangerous condition caused by a prescribed fire started or maintained by the state or any of its employees on or after January 1, 2012. The bill defines "state," for the purposes of the CGIA, to include every executive branch department and every state institution of higher education, excluding from the definition the courts, local governments, and other political subdivisions and public corporations. The definition of a "dangerous condition" is revised to specifically include a prescribed fire that constitutes an unreasonable risk to the health and safety of the public.

The bill expands the CGIA to contemplate potential recoveries from the state above the statutory limits when the State Claims Board (SCB) recommends that the General Assembly adopt legislation authorizing payment above those limits. After considering the interests of fairness, the public interest, and the interests of the state, the SCB may recommend an additional payment for recovery above the limits established in the CGIA, to be paid from the General Fund. This recommendation may not include payment of noneconomic losses or losses covered by insurance or any other source.

Background

On March 22, 2012, state officials coordinated a prescribed burn on publicly-owned land in rural Jefferson County. Based on a report issued by the U.S. Forest Service, embers from that prescribed burn are believed to have ignited the Lower North Fork Wildfire in the same area on March 26, 2012. At least 1,400 acres of land and improvements were directly affected by the wildfire. Damage from the wildfire is estimated to include three fatalities, and 27 residences destroyed or substantially damaged, with \$11.3 million in property damage.

As of this writing, Colorado news sources report at least nine pending legal claims stemming from the Lower North Fork Wildfire. The Intermountain Rural Electric Association, for example, suffered severe damage to electric transmission facilities as a result of the wildfire and asserts \$1.2 million in damages.

Under current law, negligence and other tort claims against the state may be compromised or settled by the State Claims Board. The SCB consists of the state treasurer, the state attorney general, and the executive director of the Department of Personnel and Administration (DPA). The SCB may settle claims against the state and its agencies only to the limits established in the CGIA, which settlements are paid from the Risk Management Fund maintained by the DPA (also referenced as the state self-funded liability fund). The DPA estimates that \$7.8 million was expended from the Risk Management Fund in FY 2011-12.

State Expenditures

The bill will increase administrative costs to certain Executive Branch agencies, while creating potential pressure for General Fund appropriations by the Legislative Branch as the outcome of the state claims process. The immediate implementation of the bill is not anticipated to require an appropriation.

Executive Branch - State Claims Board. The bill is likely to prompt SCB consideration of additional payments, in which case it must conduct fact-finding and deliberation to adequately consider the factors prescribed in the bill. This workload is not expected to require additional appropriations.

Legislative Branch – Additional payments – General Fund expenditure. As directed by the bill, additional payments require a General Fund appropriation. The bill allows the SBC to recommend additional payments, but any such payments are subject to appropriation by the General Assembly.

At this time, it is unknown how many parties will petition for or be considered for additional payments by the SCB, how the SCB will weigh statutory factors in the consideration of such cases, and to what extent potential monetary damages will be offset by insurance proceeds or other compensation from other sources. As an example of potential General Fund demands that may result from the bill, and based on reported amounts, total economic losses from the Lower North Fork Wildfire exceed \$11.3 million.

Departments Contacted

All Departments