

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 12-0964.01 Bob Lackner x4350

HOUSE BILL 12-1361

HOUSE SPONSORSHIP

Gardner B. and Gerou,

SENATE SPONSORSHIP

Cadman and Nicholson,

House Committees
Appropriations

Senate Committees
State, Veterans & Military Affairs

A BILL FOR AN ACT

101 **CONCERNING CLAIMS AGAINST THE STATE ARISING UNDER THE**
102 **"COLORADO GOVERNMENTAL IMMUNITY ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries.>)

In connection with the "Colorado Governmental Immunity Act" (CGIA):

! **Section 1** of the bill expands the definition of "dangerous condition" to include a prescribed fire started or maintained by the state.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unam ended
May 9, 2012

SENATE
2nd Reading Unam ended
May 8, 2012

HOUSE
3rd Reading Unam ended
May 7, 2012

HOUSE
Am ended 2nd Reading
May 4, 2012

! In addition to any other claims for which the state waives immunity under the CGIA, **section 2** of the bill waives sovereign immunity in connection with claims against the state in an action for injuries resulting 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.

! Section 2 of the bill specifies that it shall not be construed to constitute a waiver of sovereign immunity if the injury arises from any act, or failure to act, of a state employee if the act is the type of act for which the state employee would be or heretofore has been personally immune from liability.

! Section 2 of the bill also specifies that the state shall also have the same immunity as a state employee for any act or failure to act for which a state employee would be or heretofore has been personally immune from liability.

Section 3 of the bill modifies existing law to clarify the requirements under which an amount may be recovered against the state in excess of the maximum liability amounts specified in the CGIA. The bill clarifies existing provisions to specify that the general assembly acting by bill may authorize payment of all or a portion of a judgment against the state that exceeds the maximum amounts.

Section 3 of the bill sets up an alternate procedure under which the state claims board, after compromising or settling a claim on behalf of the state for the maximum liability limits under the CGIA, is empowered to determine, in its sole discretion, whether to recommend to the general assembly that the general assembly, by bill, authorize all or any portion of any such additional payment. In determining whether to make such recommendation, the claims board is required to consider interests of fairness, the public interest, and the interests of the state. A recommendation made by the claims board shall not include payment for noneconomic loss or injury and is to be reduced to the extent the claimant's loss is or will be covered by another source, including any insurance proceeds that have been paid or will be paid, and no insurer shall have a right of subrogation against the claimant for any additional payment or any portion of such payment that is approved by the general assembly. Any additional payment or any portion of such payment approved by the general assembly is to be paid from the general fund.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-10-103, **amend**

1 (1); and **add** (1.3), (3.5), and (7) as follows:

2 **24-10-103. Definitions.** As used in this article, unless the context
3 otherwise requires:

4 (1) ~~"Dangerous condition" means a physical condition of a facility~~
5 ~~or the use thereof that constitutes an unreasonable risk to the health or~~
6 ~~safety of the public, which is known to exist or which in the exercise of~~
7 ~~reasonable care should have been known to exist and which condition is~~
8 ~~proximately caused by the negligent act or omission of the public entity~~
9 ~~or public employee in constructing or maintaining such facility. For the~~
10 ~~purposes of this subsection (1), a dangerous condition should have been~~
11 ~~known to exist if it is established that the condition had existed for such~~
12 ~~a period and was of such a nature that, in the exercise of reasonable care,~~
13 ~~such condition and its dangerous character should have been discovered.~~
14 ~~A dangerous condition shall not exist solely because the design of any~~
15 ~~facility is inadequate. The mere existence of wind, water, snow, ice, or~~
16 ~~temperature shall not, by itself, constitute a dangerous condition~~
17 "CONTROLLED AGRICULTURAL BURN" MEANS A TECHNIQUE USED IN
18 FARMING TO CLEAR THE LAND OF ANY EXISTING CROP RESIDUE, KILL
19 WEEDS AND WEED SEEDS, OR TO REDUCE FUEL BUILDUP AND DECREASE
20 THE LIKELIHOOD OF A FUTURE FIRE.

21 (1.3) "DANGEROUS CONDITION" MEANS EITHER A PHYSICAL
22 CONDITION OF A FACILITY OR THE USE THEREOF ■ ■ THAT CONSTITUTES
23 AN UNREASONABLE RISK TO THE HEALTH OR SAFETY OF THE PUBLIC,
24 WHICH IS KNOWN TO EXIST OR WHICH IN THE EXERCISE OF REASONABLE
25 CARE SHOULD HAVE BEEN KNOWN TO EXIST AND WHICH CONDITION IS
26 PROXIMATELY CAUSED BY THE NEGLIGENT ACT OR OMISSION OF THE
27 PUBLIC ENTITY OR PUBLIC EMPLOYEE IN CONSTRUCTING OR MAINTAINING

1 SUCH FACILITY. FOR THE PURPOSES OF THIS SUBSECTION (1.3), A
2 DANGEROUS CONDITION SHOULD HAVE BEEN KNOWN TO EXIST IF IT IS
3 ESTABLISHED THAT THE CONDITION HAD EXISTED FOR SUCH A PERIOD AND
4 WAS OF SUCH A NATURE THAT, IN THE EXERCISE OF REASONABLE CARE,
5 SUCH CONDITION AND ITS DANGEROUS CHARACTER SHOULD HAVE BEEN
6 DISCOVERED. A DANGEROUS CONDITION SHALL NOT EXIST SOLELY
7 BECAUSE THE DESIGN OF ANY FACILITY IS INADEQUATE. THE MERE
8 EXISTENCE OF WIND, WATER, SNOW, ICE, OR TEMPERATURE SHALL NOT, BY
9 ITSELF, CONSTITUTE A DANGEROUS CONDITION.

10 (3.5) "PRESCRIBED FIRE" MEANS THE APPLICATION OF FIRE IN
11 ACCORDANCE WITH A WRITTEN PRESCRIPTION FOR VEGETATIVE FUELS AND
12 EXCLUDES A CONTROLLED AGRICULTURAL BURN.

13 (7) "STATE" MEANS THE GOVERNMENT OF THE STATE; EVERY
14 EXECUTIVE DEPARTMENT, BOARD, COMMISSION, COMMITTEE, BUREAU,
15 AND OFFICE; AND EVERY STATE INSTITUTION OF HIGHER EDUCATION,
16 WHETHER ESTABLISHED BY THE STATE CONSTITUTION OR BY LAW, AND
17 EVERY GOVERNING BOARD THEREOF. "STATE" DOES NOT INCLUDE THE
18 JUDICIAL DEPARTMENT, A COUNTY, MUNICIPALITY, CITY AND COUNTY,
19 SCHOOL DISTRICT, SPECIAL DISTRICT, OR ANY OTHER KIND OF DISTRICT,
20 INSTRUMENTALITY, POLITICAL SUBDIVISION, OR PUBLIC CORPORATION
21 ORGANIZED PURSUANT TO LAW.

22 **SECTION 2.** In Colorado Revised Statutes, **add** 24-10-106.1 as
23 follows:

24 **24-10-106.1. Immunity and partial waiver - claims against the**
25 **state - dangerous condition - prescribed fire - on or after January 1,**
26 **2012.** (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE,
27 THE STATE SHALL BE IMMUNE FROM LIABILITY IN ALL CLAIMS FOR INJURY

1 THAT LIE IN TORT OR COULD LIE IN TORT REGARDLESS OF WHETHER THAT
2 MAY BE THE TYPE OF ACTION OR THE FORM OF RELIEF CHOSEN BY THE
3 CLAIMANT EXCEPT AS PROVIDED OTHERWISE IN THIS SECTION OR SECTION
4 24-10-106. IN ADDITION TO ANY OTHER CLAIMS FOR WHICH THE STATE
5 WAIVES IMMUNITY UNDER THIS ARTICLE, SOVEREIGN IMMUNITY IS WAIVED
6 BY THE STATE IN AN ACTION FOR INJURIES RESULTING FROM A ■■■ ■■■
7 PRESCRIBED FIRE STARTED OR MAINTAINED BY THE STATE OR ANY OF ITS
8 EMPLOYEES ON OR AFTER JANUARY 1, 2012.

9 (2) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO
10 CONSTITUTE A WAIVER OF SOVEREIGN IMMUNITY IF THE INJURY ARISES
11 FROM ANY ACT, OR FAILURE TO ACT, OF A STATE EMPLOYEE IF THE ACT IS
12 THE TYPE OF ACT FOR WHICH THE STATE EMPLOYEE WOULD BE OR
13 HERETOFORE HAS BEEN PERSONALLY IMMUNE FROM LIABILITY.

14 (3) IN ADDITION TO THE IMMUNITY PROVIDED UNDER SUBSECTION
15 (1) OF THIS SECTION, THE STATE SHALL ALSO HAVE THE SAME IMMUNITY
16 AS A STATE EMPLOYEE FOR ANY ACT OR FAILURE TO ACT FOR WHICH A
17 STATE EMPLOYEE WOULD BE OR HERETOFORE HAS BEEN PERSONALLY
18 IMMUNE FROM LIABILITY.

19 (4) NO RULE OF LAW IMPOSING ABSOLUTE OR STRICT LIABILITY
20 SHALL BE APPLIED IN ANY ACTION AGAINST THE STATE FOR AN INJURY
21 RESULTING FROM A PRESCRIBED FIRE STARTED OR MAINTAINED BY THE
22 STATE OR ANY OF ITS EMPLOYEES. NO LIABILITY SHALL BE IMPOSED IN ANY
23 SUCH ACTION UNLESS NEGLIGENCE IS PROVEN.

24 **SECTION 3.** In Colorado Revised Statutes, 24-10-114, **amend**
25 (5) as follows:

26 **24-10-114. Limitations on judgments - recommendation to**
27 **general assembly - authorization of additional payment.**

1 (5) Notwithstanding the maximum amounts that may be recovered from
2 a public entity set forth in subsection (1) of this section, ~~a judgment or~~
3 ~~judgments may be claimed and rendered against the state~~ AN AMOUNT
4 MAY BE RECOVERED FROM THE STATE UNDER THIS ARTICLE in excess of
5 the maximum amounts only if PARAGRAPH (a) OR (b) OF THIS SUBSECTION
6 (5) APPLIES:

7 (a) The general assembly acting by bill authorizes payment of all
8 or a portion of ~~the~~ ANY judgment ~~which~~ AGAINST THE STATE THAT
9 exceeds the maximum amount. Any claimant may present proof of
10 judgment to the general assembly and request payment of that portion of
11 the judgment which exceeds the maximum amount. Any portion of a
12 judgment approved for payment by the general assembly shall be paid
13 from the general fund.

14 (b) THE STATE CLAIMS BOARD CREATED IN SECTION 24-30-1508
15 (1), ACTING IN ACCORDANCE WITH ITS AUTHORITY UNDER SECTION
16 24-30-1515, COMPROMISES OR SETTLES A CLAIM ON BEHALF OF THE STATE
17 FOR THE MAXIMUM LIABILITY LIMITS UNDER THIS ARTICLE AND
18 DETERMINES, IN ITS SOLE DISCRETION, TO RECOMMEND TO THE GENERAL
19 ASSEMBLY THAT THE GENERAL ASSEMBLY, BY BILL, AUTHORIZE ALL OR
20 ANY PORTION OF AN ADDITIONAL PAYMENT. IN DETERMINING WHETHER TO
21 MAKE SUCH RECOMMENDATION, THE CLAIMS BOARD SHALL CONSIDER
22 INTERESTS OF FAIRNESS, THE PUBLIC INTEREST, AND THE INTERESTS OF THE
23 STATE. A RECOMMENDATION MADE UNDER THIS PARAGRAPH (b) SHALL
24 NOT INCLUDE PAYMENT FOR NONECONOMIC LOSS OR INJURY AND SHALL BE
25 REDUCED TO THE EXTENT THE CLAIMANT'S LOSS IS OR WILL BE COVERED
26 BY ANOTHER SOURCE, INCLUDING, WITHOUT LIMITATION, ANY INSURANCE
27 PROCEEDS THAT HAVE BEEN PAID OR WILL BE PAID, AND NO INSURER

1 SHALL HAVE A RIGHT OF SUBROGATION, ASSIGNMENT, OR ANY OTHER
2 RIGHT AGAINST THE CLAIMANT OR THE STATE FOR ANY ADDITIONAL
3 PAYMENT OR ANY PORTION OF SUCH PAYMENT THAT IS APPROVED BY THE
4 GENERAL ASSEMBLY. ANY ADDITIONAL PAYMENT OR ANY PORTION OF
5 SUCH PAYMENT APPROVED BY THE GENERAL ASSEMBLY SHALL BE PAID
6 FROM THE GENERAL FUND.

7 **SECTION 4.** In Colorado Revised Statutes, 24-30-1509, **add** (1)
8 (d) as follows:

9 **24-30-1509. Powers and duties of the board.** (1) The board
10 shall have the following powers and duties:

11 (d) TO DETERMINE WHETHER TO RECOMMEND TO THE GENERAL
12 ASSEMBLY THAT THE GENERAL ASSEMBLY, BY BILL, AUTHORIZE ALL OR
13 ANY PORTION OF AN ADDITIONAL PAYMENT TO A CLAIMANT IN
14 ACCORDANCE WITH THE PROVISIONS OF SECTION 24-10-114 (5) (b).

15 **SECTION 5. Applicability.** The provisions of this act apply to
16 claims asserted against the state on or after January 1, 2012.

17 **SECTION 6. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, and safety.