

Colorado Legislative Council Staff Fiscal Note
STATE, LOCAL, and
STATUTORY PUBLIC ENTITY
FISCAL IMPACT

Drafting Number: LLS 13-0343	Date: February 22, 2013
Prime Sponsor(s): Sen. Cadman; Morse	Bill Status: Senate Judiciary
	Fiscal Analyst: Kirk Mlinek (303-866-2756)

TITLE: CONCERNING AN INCREASE IN THE LIMITATION ON THE AMOUNT OF DAMAGES THAT MAY BE RECOVERED BY AN INJURED PARTY UNDER THE "COLORADO GOVERNMENTAL IMMUNITY ACT".

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
State Revenue		
State Expenditures	See State Expenditures section	
FTE Position Change		
Effective Date: The bill takes effect July 1, 2013, and applies to civil actions filed on or after said date.		
Appropriation Summary for FY 2013-2014: None required.		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

The bill increases the damages limitation cap under the Colorado Governmental Immunity Act (CGIA) to \$478,000 for the claim on an individual party and a total recovery of \$990,000 for any single occurrence. Under the bill, these amounts are exclusive of interest, which may be awarded in addition to the amounts noted above. Current law caps damage recoveries at \$150,000 for the claim on any individual party and a total recovery of \$600,000 for any single occurrence, and does not allow for interest.

The proposed caps represent an inflation adjustment from the last times that the amounts were adjusted in 1979 and 1992. Beginning January 1, 2018, and every four years thereafter, the attorney general (AG) is required to adjust the caps based on the Consumer Price Index for Denver-Boulder-Greeley. The adjusted amounts are to be published on the AG's web site.

Background

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 CGIA. Claims are made in the areas of general liability, automobile liability, and medical liability. As a matter of practice, some entities

purchase excess insurance (surplus line) to cover damage awards that exceed primary coverage. For example, Adams State College maintains per occurrence and aggregate liability coverage of \$1.0 million and \$2.0 million, respectively.

Claims against the state may be compromised or settled by the State Claims Board (SCB). 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 Department of Law reported at its 2012 Joint Budget Committee (JBC) hearing that it keeps records of State Claims Board settlements for six years, and that 47 matters were settled with payments from the Risk Management Fund from 2006 to 2012. The report did not specify the number of settlements that involved multiple parties. Within the overall caseload of risk management claims, 0 to 4 percent of claims paid were awarded by the SCB during that time period. The table below displays state payments under the CGIA under the current caps for the period FY 2007-08 through FY 2011-12.

State Payments Under the Colorado Governmental Immunity Act FY 2007-08 through FY 2011-12						
	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	Total/Avg.
Claims filed	1,170	1,076	1,249	1,054	1,044	5,593
Average Amount Claimed	\$860	\$896	\$1,212	\$1,496	\$255	\$944
# of SCB Settlements CGIA	2	0	1	2	5	10
Total # Claims Paid*	180	154	198	141	127	800
Average Claim Paid	\$5,587	\$6,259	\$7,647	\$11,186	\$2,099	\$6,556
TOTAL PAID	\$1,005,742	\$963,865	\$1,514,128	\$1,577,263	\$266,531	\$5,327,529

**This total includes the claims awarded by the State Claims Board.*

Source: Department of Personnel and Administration, Office of Risk Management

Over the past 20 years there has been one settlement at the per occurrence cap of \$600,000. There is a pending per occurrence cap claim that relates to the 2012 Lower North Fork Fire. In each of the last three fiscal years there was one claim paid at the individual cap of \$150,000. As shown in the table, while the number of claims filed during the last 5 years was relatively constant, the average claim paid varied from a low of \$2,099 in FY 2011-12, to a high of \$11,186 in FY 2010-11.

State Expenditures

State expenditures are expected to increase under the bill, but the amount of increase has not been estimated for the reasons listed below.

- While the bill does not change the basis for making a claim, increasing the caps could result in more claims, more litigation, and higher awards.

- The number of settlements, and the amount paid for each, are expected to increase under the bill. Settlements frequently occur because the cost to mount a legal defense may exceed the \$150,000 cap on judgments. Based on a least-cost approach, the state may choose to litigate a larger number of claims.
- The bill permits interest to be awarded on top of any per person or total occurrence damages award.
- State agency payments to the Risk Management Fund in DPA will increase to the extent that state agencies participating in the pool are required to increase contributions to maintain Risk Management Fund solvency. The potential amount of increase has not been estimated. DPA will adjust annual budget requests for the Risk Management Fund in accordance with actuarial estimates.
- The future number of claims settled or awarded at the cap amounts cannot be estimated. While history shows that such awards are rare, the per person cap increases \$328,000 under the bill, and the per occurrence cap increases \$390,000. One claim at this level, using the average number of claims for the last 3 years, would deplete the contingency reserve currently maintained for the liability fund, triggering an increase in contributions by participating agencies or, depending on the timing of the shortfall, a supplemental request funded by the General Fund.
- State agencies insured outside the state's self-funded pool could see an increase in premiums as insurers mitigate risk under the new caps; policies are renewed annually, usually on January 1 each year.
- The built-in inflation adjustment is assumed to increase costs in four-year increments starting in 2018, to the entities covered by the CGIA.

University of Colorado System (CU). If the caps as proposed in the bill were in place in the current fiscal year, the CU system would experience an estimated increase in general liability damages payouts of \$485,762, and an increase of \$39,984 in payouts for automobile-related accidents. These estimates were provided by CU's contract actuarial firm.

Local Government Impact and Statutory Public Entity Impact

Impacts at the local government level mirror those of state-level impacts. Some counties self-insure; the remainder belong to an insurance pool operated by County Technical Services, Inc. (CTSI). Some municipalities self-insure or purchase commercial insurance; others participate in the Colorado Intergovernmental Risk Sharing Agency (CIRSA), discussed in more detail below.

CIRSA provides property and liability coverage to 241 municipalities and related authorities. Based on the caps proposed in the bill, CIRSA estimates that member contributions (premiums) could increase pool-wide by approximately \$1.3 million for calendar year 2014, an approximate 6 percent increase over 2013.

An insurer of 25 rural hospitals and one Front Range hospital estimates that premiums for this group will increase approximately 11.7 to 17.6 percent under the bill. With an aggregate premium value of \$1.0 million, the increase means that at least an additional \$117,000 to \$176,000 in premiums will be paid per year. This insurer provides a 20 percent premium credit that is directly attributable to Colorado's current CGIA caps; the higher estimate assumes that the discount is reduced to 5 percent. In the last 5 years, the insurer has paid 2 claims at the \$150,000 individual cap for Colorado hospitals in this group.

Departments Contacted

All Departments
RTD

Special Districts
Municipalities

Counties