

Second Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0964.01 Bob Lackner x4350

HOUSE BILL 12-1361

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HOUSE SPONSORSHIP

Gardner B. and Gerou,

SENATE SPONSORSHIP

Cadman and Nicholson,

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House Committees  
Appropriations

Senate Committees

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A BILL FOR AN ACT

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

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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.*

! In addition to any other claims for which the state waives immunity under the CGA, **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 CGA. 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 CGA, 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

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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 OR A PRESCRIBED FIRE  
23 STARTED OR MAINTAINED BY THE STATE THAT CONSTITUTES AN  
24 UNREASONABLE RISK TO THE HEALTH OR SAFETY OF THE PUBLIC, WHICH  
25 IS KNOWN TO EXIST OR WHICH IN THE EXERCISE OF REASONABLE CARE  
26 SHOULD HAVE BEEN KNOWN TO EXIST AND WHICH CONDITION IS  
27 PROXIMATELY CAUSED BY THE NEGLIGENT ACT OR OMISSION OF THE

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

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

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

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

26 **24-10-106.1. Immunity and partial waiver - claims against the**  
27 **state - dangerous condition - prescribed fire - on or after January 1,**

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

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

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

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

23           **24-10-114. Limitations on judgments - recommendation to**  
24    **general assembly - authorization of additional payment.**

25    (5) Notwithstanding the maximum amounts that may be recovered from  
26    a public entity set forth in subsection (1) of this section, ~~a judgment or~~  
27    ~~judgments may be claimed and rendered against the state~~ AN AMOUNT

1 MAY BE RECOVERED FROM THE STATE UNDER THIS ARTICLE in excess of  
2 the maximum amounts only if PARAGRAPH (a) OR (b) OF THIS SUBSECTION  
3 (5) APPLIES:

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

11 (b) THE STATE CLAIMS BOARD CREATED IN SECTION 24-30-1508  
12 (1), ACTING IN ACCORDANCE WITH ITS AUTHORITY UNDER SECTION  
13 24-30-1515, COMPROMISES OR SETTLES A CLAIM ON BEHALF OF THE STATE  
14 FOR THE MAXIMUM LIABILITY LIMITS UNDER THIS ARTICLE AND  
15 DETERMINES, IN ITS SOLE DISCRETION, TO RECOMMEND TO THE GENERAL  
16 ASSEMBLY THAT THE GENERAL ASSEMBLY, BY BILL, AUTHORIZE ALL OR  
17 ANY PORTION OF ANY SUCH ADDITIONAL PAYMENT. IN DETERMINING  
18 WHETHER TO MAKE SUCH RECOMMENDATION, THE CLAIMS BOARD SHALL  
19 CONSIDER INTERESTS OF FAIRNESS, THE PUBLIC INTEREST, AND THE  
20 INTERESTS OF THE STATE. A RECOMMENDATION MADE UNDER THIS  
21 PARAGRAPH (b) SHALL NOT INCLUDE PAYMENT FOR NONECONOMIC LOSS  
22 OR INJURY AND SHALL BE REDUCED TO THE EXTENT THE CLAIMANT'S LOSS  
23 IS OR WILL BE COVERED BY ANOTHER SOURCE, INCLUDING, WITHOUT  
24 LIMITATION, ANY INSURANCE PROCEEDS THAT HAVE BEEN PAID OR WILL BE  
25 PAID, AND NO INSURER SHALL HAVE A RIGHT OF SUBROGATION AGAINST  
26 THE CLAIMANT FOR ANY ADDITIONAL PAYMENT OR ANY PORTION OF SUCH  
27 PAYMENT THAT IS APPROVED BY THE GENERAL ASSEMBLY. ANY

1 ADDITIONAL PAYMENT OR ANY PORTION OF SUCH PAYMENT APPROVED BY  
2 THE GENERAL ASSEMBLY SHALL BE PAID FROM THE GENERAL FUND.

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

5 **24-30-1509. Powers and duties of the board.** (1) The board  
6 shall have the following powers and duties:

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

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

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