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An Act

HOUSE BILL 12-1361

BY REPRESENTATIVE(S) Gardner B. and Gerou, Barker, Casso, Ferrandino, Fischer, Hamner, Hullinghorst, Kagan, Kefalas, Kerr A., Kerr J., Looper, Pabon, Pace, Peniston, Priola, Scott, Solano, Summers, Todd, Williams A., Young;
also SENATOR(S) Cadman and Nicholson, Neville, Boyd, Heath, Jahn, Lambert, Lundberg, Morse, Newell, Schwartz.

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

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

SECTION 1. In Colorado Revised Statutes, 24-10-103, **amend** (1); and **add** (1.3), (3.5), and (7) as follows:

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

(1) ~~"Dangerous condition" means a physical condition of a facility or the use thereof that constitutes an unreasonable risk to the health or safety of the public, which is known to exist or which in the exercise of reasonable care should have been known to exist and which condition is proximately caused by the negligent act or omission of the public entity or~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~public employee in constructing or maintaining such facility. For the purposes of this subsection (1), a dangerous condition should have been known to exist if it is established that the condition had existed for such a period and was of such a nature that, in the exercise of reasonable care, such condition and its dangerous character should have been discovered. A dangerous condition shall not exist solely because the design of any facility is inadequate. The mere existence of wind, water, snow, ice, or temperature shall not, by itself, constitute a dangerous condition~~ "CONTROLLED AGRICULTURAL BURN" MEANS A TECHNIQUE USED IN FARMING TO CLEAR THE LAND OF ANY EXISTING CROP RESIDUE, KILL WEEDS AND WEED SEEDS, OR TO REDUCE FUEL BUILDUP AND DECREASE THE LIKELIHOOD OF A FUTURE FIRE.

(1.3) "DANGEROUS CONDITION" MEANS EITHER A PHYSICAL CONDITION OF A FACILITY OR THE USE THEREOF THAT CONSTITUTES AN UNREASONABLE RISK TO THE HEALTH OR SAFETY OF THE PUBLIC, WHICH IS KNOWN TO EXIST OR WHICH IN THE EXERCISE OF REASONABLE CARE SHOULD HAVE BEEN KNOWN TO EXIST AND WHICH CONDITION IS PROXIMATELY CAUSED BY THE NEGLIGENT ACT OR OMISSION OF THE PUBLIC ENTITY OR PUBLIC EMPLOYEE IN CONSTRUCTING OR MAINTAINING SUCH FACILITY. FOR THE PURPOSES OF THIS SUBSECTION (1.3), A DANGEROUS CONDITION SHOULD HAVE BEEN KNOWN TO EXIST IF IT IS ESTABLISHED THAT THE CONDITION HAD EXISTED FOR SUCH A PERIOD AND WAS OF SUCH A NATURE THAT, IN THE EXERCISE OF REASONABLE CARE, SUCH CONDITION AND ITS DANGEROUS CHARACTER SHOULD HAVE BEEN DISCOVERED. A DANGEROUS CONDITION SHALL NOT EXIST SOLELY BECAUSE THE DESIGN OF ANY FACILITY IS INADEQUATE. THE MERE EXISTENCE OF WIND, WATER, SNOW, ICE, OR TEMPERATURE SHALL NOT, BY ITSELF, CONSTITUTE A DANGEROUS CONDITION.

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

(7) "STATE" MEANS THE GOVERNMENT OF THE STATE; EVERY EXECUTIVE DEPARTMENT, BOARD, COMMISSION, COMMITTEE, BUREAU, AND OFFICE; AND EVERY STATE INSTITUTION OF HIGHER EDUCATION, WHETHER ESTABLISHED BY THE STATE CONSTITUTION OR BY LAW, AND EVERY GOVERNING BOARD THEREOF. "STATE" DOES NOT INCLUDE THE JUDICIAL DEPARTMENT, A COUNTY, MUNICIPALITY, CITY AND COUNTY, SCHOOL DISTRICT, SPECIAL DISTRICT, OR ANY OTHER KIND OF DISTRICT,

INSTRUMENTALITY, POLITICAL SUBDIVISION, OR PUBLIC CORPORATION ORGANIZED PURSUANT TO LAW.

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

24-10-106.1. Immunity and partial waiver - claims against the state - injuries from prescribed fire - on or after January 1, 2012.

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

(2) NOTHING IN THIS SECTION SHALL 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.

(3) IN ADDITION TO THE IMMUNITY PROVIDED UNDER SUBSECTION (1) OF THIS SECTION, 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.

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

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

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

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

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

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

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

24-30-1509. Powers and duties of the board. (1) The board shall

have the following powers and duties:

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

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

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

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO