

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-1096.01 Bob Lackner x4350

SENATE BILL 14-223

SENATE SPONSORSHIP

Nicholson and Cadman, Carroll, Heath, Steadman

HOUSE SPONSORSHIP

Gerou and Young,

Senate Committees
Appropriations

House Committees

A BILL FOR AN ACT

101 CONCERNING THE PAYMENT BY THE STATE OF LEGAL CLAIMS ARISING
102 IN CONNECTION WITH THE LOWER NORTH FORK WILDFIRE.

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>.)

Section 1 of the bill directs the state claims board (board) to compromise or settle claims brought by certain claimants who have suffered damages or other losses in connection with the lower north fork wildfire (wildfire) in March 2012 to reimburse them for their economic and noneconomic losses as well as interest on such amounts. The bill

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.

specifies that the total amount of the moneys paid to each claimant reflects the amount of money in excess of the liability limitations under current law for which the board recommended the claimant recover, any additional damages that the arbiters recommended the state pay these claimants in pending state court litigation, and interest on such amounts.

Upon approval by the board of the payments of the total claims, the office of the state controller is required to make payment to the claimants from the general fund no later than September 1, 2014.

In accepting the payment, a claimant agrees to release the state from any future claims arising out of the wildfire.

Section 2 of the bill specifies the total amount to be paid to each claimant by the state.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-10-114, **amend**
3 (5) introductory portion and (5) (b) (I); and **add** (5) (c) as follows:

4 **24-10-114. Limitations on judgments - recommendation to**
5 **general assembly - authorization of additional payment - lower north**
6 **fork wildfire - legislative declaration.** (5) Notwithstanding the
7 maximum amounts that may be recovered from a public entity set forth
8 in subsection (1) of this section, an amount may be recovered from the
9 state under this article in excess of the maximum amounts only if
10 paragraph (a), ~~or~~ (b), OR (c) of this subsection (5) applies:

11 (b) (I) Except as otherwise provided in subparagraphs (II) and
12 (III) of this paragraph (b) OR PARAGRAPH (c) OF THIS SUBSECTION (5), the
13 state claims board created in section 24-30-1508 (1), referred to in this
14 ~~paragraph (b)~~ SUBSECTION (5) as the "board", acting in accordance with
15 its authority under section 24-30-1515, compromises or settles a claim on
16 behalf of the state for the maximum liability limits under this article and
17 determines, in its sole discretion, to recommend to the general assembly
18 that an additional payment be made and the general assembly, by bill,
19 authorizes all or any portion of the additional payment. In determining

1 whether to make such recommendation, the board shall consider interests
2 of fairness, the public interest, and the interests of the state. A
3 recommendation made under this paragraph (b) shall not include payment
4 for noneconomic loss or injury and shall be reduced to the extent the
5 claimant's loss is or will be covered by another source, including, without
6 limitation, any insurance proceeds that have been paid or will be paid, and
7 no insurer has a right of subrogation, assignment, or any other right
8 against the claimant or the state for any additional payment or any portion
9 of such payment that is approved by the general assembly. Any additional
10 payment or any portion of such payment approved by the general
11 assembly shall be paid from the general fund. For purposes of this
12 paragraph (b), an "additional payment" means the payment to a claimant
13 in excess of the maximum liability limits pursuant to this paragraph (b)
14 that may be authorized by the general assembly upon a recommendation
15 from the board.

16 (c) (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE
17 BOARD IS HEREBY DIRECTED TO COMPROMISE OR SETTLE CLAIMS BROUGHT
18 BY CERTAIN CLAIMANTS WHO HAVE SUFFERED DAMAGES OR OTHER LOSSES
19 IN CONNECTION WITH THE LOWER NORTH FORK WILDFIRE IN MARCH 2012
20 TO REIMBURSE THEM FOR THEIR ECONOMIC AND NONECONOMIC LOSSES,
21 ALONG WITH INTEREST ON SUCH AMOUNTS. THE TOTAL AMOUNT OF THE
22 CLAIMS TO BE PAID TO EACH CLAIMANT IS SPECIFIED IN THE TABLE
23 CONTAINED IN SECTION 2 OF SENATE BILL 14-____, ENACTED IN 2014. THE
24 TOTAL AMOUNT OF MONEYS TO BE PAID TO EACH CLAIMANT UNDER THIS
25 SUBPARAGRAPH (I) REFLECTS THE AMOUNT OF DAMAGES IN EXCESS OF THE
26 LIABILITY LIMITATIONS SPECIFIED IN SUBSECTION (1) OF THIS SECTION FOR
27 WHICH THE BOARD RECOMMENDED THE CLAIMANT RECOVER UNDER

1 SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION (5), ANY
2 ADDITIONAL DAMAGES THAT THE ARBITERS RECOMMENDED THE STATE
3 PAY THESE CLAIMANTS IN CONNECTION WITH LITIGATION BROUGHT IN
4 JEFFERSON COUNTY DISTRICT COURT, AND INTEREST ON SUCH AMOUNTS.

5 (II) UPON APPROVAL BY THE BOARD OF THE PAYMENTS OF THE
6 TOTAL CLAIMS SPECIFIED IN THE TABLE CONTAINED IN SECTION 2 OF
7 SENATE BILL 14-___, ENACTED IN 2014, THE OFFICE OF THE STATE
8 CONTROLLER SHALL MAKE SUCH PAYMENT TO THE CLAIMANTS FROM THE
9 GENERAL FUND IN THE AMOUNT OF THE TOTAL CLAIMS TO BE PAID EACH
10 CLAIMANT SPECIFIED IN THE TABLE NO LATER THAN SEPTEMBER 1, 2014.

11 (III) NO INSURER HAS A RIGHT OF SUBROGATION, ASSIGNMENT, OR
12 ANY OTHER RIGHT AGAINST THE CLAIMANT FOR ANY ADDITIONAL
13 PAYMENT OR ANY PORTION OF THE PAYMENT THAT IS APPROVED BY THE
14 GENERAL ASSEMBLY.

15 (IV) IN ACCEPTING THE PAYMENT FOR SUCH CLAIMS AUTHORIZED
16 TO BE PAID PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (c), THE
17 CLAIMANT AND ANY OF THE CLAIMANT'S SUCCESSORS, AGENTS, HEIRS,
18 AND ASSIGNS, COLLECTIVELY REFERRED TO AS THE "CLAIMANT", HEREBY
19 FOREVER RELEASE AND DISCHARGE THE STATE AND ANY OF ITS OFFICERS,
20 EMPLOYEES, AND AGENTS FROM ANY AND ALL MATTERS, CLAIMS,
21 COMPLAINTS, CHARGES, DEMANDS, DAMAGES, CAUSES OF ACTION, DEBTS,
22 LIABILITIES, CONTROVERSIES, JUDGEMENTS, AND SUITS OF EVERY KIND
23 AND NATURE WHATSOEVER ARISING OUT OF THE LOWER NORTH FORK
24 WILDFIRE IN MARCH 2012, AS OF THE EFFECTIVE DATE OF THIS PARAGRAPH
25 (c), WHETHER FORESEEN OR UNFORESEEN, KNOWN OR UNKNOWN.

26 (V) INSOFAR AS THE COMPROMISE AND SETTLEMENT EFFECTED BY
27 THIS PARAGRAPH (c) ADDRESSES ALL OUTSTANDING CLAIMS ARISING OUT

1 OF THE LOWER NORTH FORK WILDFIRE IN A JUST AND REASONABLE
 2 MANNER, THE GENERAL ASSEMBLY HEREBY STRONGLY ENCOURAGES THE
 3 DEPARTMENT OF LAW TO REFRAIN FROM APPEALING THE ORDER DATED
 4 APRIL 24, 2014, REGARDING HOMEOWNERS' REQUESTS FOR ENTRY OF
 5 JUDGEMENT IN THE LITIGATION ENTITLED *IN RE THE LOWER NORTH FORK*
 6 *FIRE LITIGATION IN JEFFERSON COUNTY DISTRICT COURT*, CASE NO. 12 CV
 7 2550.

8 **SECTION 2. Lower north fork wildfire claimants and totals.**

9 The total amount of claims to be paid to each claimant is specified in the
 10 following table:

Name of Claimant	Total Amount of Claim
Scott Appel, individually and on behalf of the heirs and estate of Ann Appel	\$4,779,480
Joanne Baldwin, individually and her minor children and the Richard and Janet Pierce Family Trust	\$126,793
Dan Brubaker and Patricia Brubaker	\$473,315
John Campbell and Catherine Campbell	\$419,152
Bruce Ellis, Mary Ann Ellis, and Bee Group, Inc.	\$364,439
James M. Fildey and F. Jill Fildey	\$952,473
Douglas Gulick, Kim Olson, for themselves and on behalf of their children, Rhoanabella, Quillan, and Kaleb	\$487,257
Morey Gustafson and Denise Gustafson	\$62,866
Andrew Hoover and Jean Hoover	\$2,560,811
Kenneth Kobs and Susanne Kobs	\$425,923
Maria Kuehster, Christine Kuehster, and Edward Kuehster	\$464,786

1	Samuel Lucas, Jr., and Linda White, individually	
2	and as personal representatives of the estates of	
3	Samuel Lucas, Sr., and Linda Moaneti Lucas	\$1,360,895
4	Coe Meyer	\$775,867
5	Jack Ogg and Mary Ogg	\$200,965
6	Dennis and Nancy Pappas	\$1,187,500
7	Thomas Scanlan, Sharon Scanlan, and Scanlan	
8	Associates Ltd.	\$906,761
9	George and Claire Schmidt	\$184,670
10	Jon Shirley, Amy Shirley, Sara Shirley,	
11	individually and on behalf of her minor children,	
12	Joshua and Ashley Warfel	\$1,649,510
13	James Spoon and Aileen Spoon	\$165,500
14	Mountain Area Land Trust (MALT)	\$87,590
15	Total of all claims	\$17,636,554

16 **SECTION 3. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety.