

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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, AND,**
103 **IN CONNECTION THEREWITH, MAKING AND REDUCING**
104 **APPROPRIATIONS.**

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

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.

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 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

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

18 (c) (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE
19 BOARD IS HEREBY DIRECTED TO COMPROMISE OR SETTLE CLAIMS BROUGHT
20 BY CERTAIN CLAIMANTS WHO HAVE SUFFERED DAMAGES OR OTHER LOSSES
21 IN CONNECTION WITH THE LOWER NORTH FORK WILDFIRE IN MARCH 2012
22 TO REIMBURSE THEM FOR THEIR ECONOMIC AND NONECONOMIC LOSSES,
23 ALONG WITH INTEREST ON SUCH AMOUNTS. THE TOTAL AMOUNT OF THE
24 CLAIMS TO BE PAID TO EACH CLAIMANT IS SPECIFIED IN THE TABLE
25 CONTAINED IN SECTION 2 OF SENATE BILL 14-223, ENACTED IN 2014. THE
26 TOTAL AMOUNT OF MONEYS TO BE PAID TO EACH CLAIMANT UNDER THIS
27 SUBPARAGRAPH (I) REFLECTS THE AMOUNT OF DAMAGES IN EXCESS OF THE

1 LIABILITY LIMITATIONS SPECIFIED IN SUBSECTION (1) OF THIS SECTION FOR
2 WHICH THE BOARD RECOMMENDED THE CLAIMANT RECOVER UNDER
3 SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION (5), ANY
4 ADDITIONAL DAMAGES THAT THE ARBITERS RECOMMENDED THE STATE
5 PAY THESE CLAIMANTS IN CONNECTION WITH LITIGATION BROUGHT IN
6 JEFFERSON COUNTY DISTRICT COURT, AND INTEREST ON SUCH AMOUNTS.

7 (II) UPON APPROVAL BY THE BOARD OF THE PAYMENTS OF THE
8 TOTAL CLAIMS SPECIFIED IN THE TABLE CONTAINED IN SECTION 2 OF
9 SENATE BILL 14-223, ENACTED IN 2014, THE OFFICE OF THE STATE
10 CONTROLLER SHALL MAKE SUCH PAYMENT TO THE CLAIMANTS FROM THE
11 GENERAL FUND IN THE AMOUNT OF THE TOTAL CLAIMS TO BE PAID EACH
12 CLAIMANT SPECIFIED IN THE TABLE NO LATER THAN SEPTEMBER 1, 2014.

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

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

1 (V) INsofar AS THE COMPROMISE AND SETTLEMENT EFFECTED BY
 2 THIS PARAGRAPH (c) ADDRESSES ALL OUTSTANDING CLAIMS ARISING OUT
 3 OF THE LOWER NORTH FORK WILDFIRE IN A JUST AND REASONABLE
 4 MANNER, THE GENERAL ASSEMBLY HEREBY STRONGLY ENCOURAGES THE
 5 DEPARTMENT OF LAW TO REFRAIN FROM APPEALING THE ORDER DATED
 6 APRIL 24, 2014, REGARDING HOMEOWNERS' REQUESTS FOR ENTRY OF
 7 JUDGEMENT IN THE LITIGATION ENTITLED *IN RE THE LOWER NORTH FORK*
 8 *FIRE LITIGATION IN JEFFERSON COUNTY DISTRICT COURT*, CASE NO. 12 CV
 9 2550.

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

11 The total amount of claims to be paid to each claimant is specified in the
 12 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

1	Maria Kuehster, Christine Kuehster, and Edward	
2	Kuehster	\$464,786
3	Samuel Lucas, Jr., and Linda White, individually	
4	and as personal representatives of the estates of	
5	Samuel Lucas, Sr., and Linda Moaneti Lucas	\$1,360,895
6	Coe Meyer	\$775,867
7	Jack Ogg and Mary Ogg	\$200,965
8	Dennis and Nancy Pappas	\$1,187,500
9	Thomas Scanlan, Sharon Scanlan, and Scanlan	
10	Associates Ltd.	\$906,761
11	George and Claire Schmidt	\$184,670
12	Jon Shirley, Amy Shirley, Sara Shirley,	
13	individually and on behalf of her minor children,	
14	Joshua and Ashley Warfel	\$1,649,510
15	James Spoon and Aileen Spoon	\$165,500
16	Mountain Area Land Trust (MALT)	\$87,590
17	Total of all claims	\$17,636,554

18 **SECTION 3. In Colorado Revised Statutes, 24-75-302, amend**
19 **as added by House Bill 14-1342 (2) (aa) as follows:**

20 **24-75-302. Capital construction fund - capital assessment fees**
21 **- calculation. (2) On July 1 of each year through July 1, 2014, the state**
22 **treasurer and the controller shall transfer a sum as specified in this**
23 **subsection (2) out of the general fund and into the capital construction**
24 **fund as moneys become available in the general fund during the fiscal**
25 **year beginning on said July 1. Transfers between funds pursuant to this**
26 **subsection (2) are not appropriations subject to the limitations of section**
27 **24-75-201.1. The amounts transferred pursuant to this subsection (2) are**
28 **as follows:**

1 (aa) On July 1, 2014, two hundred twenty-four million nine
2 hundred ninety-three THREE HUNDRED FIFTY-THREE thousand four
3 hundred sixty-five dollars.

4 **SECTION 4.** In Colorado Revised Statutes, 24-75-220 (4), as
5 amended by House Bill 14-1342, add (4) (a) (III.3) and (4) (a) (III.4) as
6 follows:

7 **24-75-220. State education fund - transfers - surplus -**
8 **legislative declaration.** (4) (a) Notwithstanding any provision of law to
9 the contrary, following the release of the preliminary certification by the
10 state controller for the fiscal year 2013-14 as specified in section
11 24-77-106.5 (1) (b), the director of research of the legislative council
12 shall work with the state controller to determine a preliminary figure
13 representing the estimated general fund surplus designated in accordance
14 with section 24-75-201 (1) for the fiscal year 2013-14. The state
15 controller shall provide such preliminary figure to the state treasurer, the
16 director of the office of state planning and budgeting, and the director of
17 the joint budget committee before September 15, 2014. On September 15,
18 2014, an amount equal to ninety percent of that preliminary figure is
19 allocated in the following order of priority:

20 **(III.3) THE STATE TREASURER SHALL TRANSFER SIX HUNDRED**
21 **FORTY THOUSAND DOLLARS TO THE EMERGENCY CONTROLLED**
22 **MAINTENANCE ACCOUNT CREATED IN SECTION 24-75-302 (3.2);**

23 **(III.4) THE STATE TREASURER SHALL TRANSFER ONE MILLION**
24 **DOLLARS TO THE ECONOMIC DEVELOPMENT FUND CREATED IN SECTION**
25 **24-46-105 (1);**

26 **SECTION 5. Appropriation to the department of human**
27 **services for the fiscal year beginning July 1, 2013.** In Session Laws of

1 Colorado 2013, amend section 2 of chapter 231, (SB 13-266), as section
2 2 is amended by section 3 of House Bill 14-1238, and as section 2 is
3 further amended by section 17 of House Bill 14-1336, as follows:

4 Section 2. **Appropriation.** (1) In addition to any other
5 appropriation, there is hereby appropriated, out of any moneys in the
6 general fund, not otherwise appropriated, to the department of human
7 services, for the fiscal year beginning July 1, 2013, the sum of \$5,660,072
8 \$1,378,179 and 0.9 FTE, or so much thereof as may be necessary, to be
9 allocated to behavioral health services for the implementation of this act
10 as follows:

11 (a) ~~\$4,828,419~~ \$600,000 for co-occurring behavioral health
12 services, crisis response system–crisis stabilization units, mobile crisis
13 response, respite services, and marketing;

14 (b) ~~\$758,720~~ \$705,246 for co-occurring behavioral health
15 services, crisis response system–telephone hotlines;

16 (c) \$67,280 and 0.9 FTE for administration, personal services; and

17 (d) \$5,653 for administration, operating expenses.

18 **SECTION 6. Appropriation.** In addition to any other
19 appropriation, there is hereby appropriated, out of any moneys in the
20 general fund not otherwise appropriated, to the department of personnel,
21 for the fiscal year beginning July 1, 2013, the sum of \$5,921,893, or so
22 much thereof as may be necessary, for allocation to the division of human
23 resources, risk management services, risk management program
24 administrative cost, for the compromise or settlement of claims by the
25 state claims board pursuant to section 24-10-114 (5) (c), Colorado
26 Revised Statutes, as enacted by Senate Bill 14-223, enacted in 2014,
27 related to the implementation of this act. Any moneys appropriated in

1 this section not expended prior to July 1, 2014, are further appropriated
2 to the department for the fiscal year beginning July 1, 2014, for the same
3 purposes.

4 **SECTION 7. Appropriation - adjustments to 2014 long bill.**

5 (1) For the implementation of this act, appropriations made in the annual
6 general appropriation act to the governor - lieutenant governor - state
7 planning and budgeting for the fiscal year beginning July 1, 2014, are
8 adjusted as follows:

9 (a) The general fund appropriation for economic development
10 programs, economic development commission - general economic
11 incentives and marketing, is decreased by \$1,000,000.

12 (b) The cash funds appropriation from the Colorado economic
13 development fund created in section 24-46-105 (1), Colorado Revised
14 Statutes, for economic development programs, economic development
15 commission - general economic incentives and marketing, is increased by
16 \$1,000,000. Said sum is conditioned upon the transfer of general fund
17 surplus to the Colorado economic development fund as specified in
18 section 24-75-220 (4) (a), Colorado Revised Statutes, as amended in
19 House Bill 14-1342.

20 (2) For the implementation of this act, appropriations made in the
21 annual general appropriation act for capital construction for the fiscal year
22 beginning July 1, 2014, are adjusted as follows:

23 (a) The cash funds appropriation from the capital construction
24 fund created in section 24-75-302 (1), Colorado Revised Statutes, for
25 controlled maintenance, department of personnel, emergency controlled
26 maintenance is decreased by \$640,000.

27 (b) The cash funds appropriation from the emergency controlled

1 maintenance account created in section 24-75-302 (3.2), Colorado
2 Revised Statutes, for controlled maintenance, department of personnel,
3 emergency controlled maintenance is increased by \$640,000. Said sum
4 is conditioned upon the transfer of general fund surplus to the emergency
5 controlled maintenance account as specified in section 24-75-220 (4) (a),
6 Colorado Revised Statutes, as amended in House Bill 14-1342.

7 **SECTION 8. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, and safety.