

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 12-0955.01 Bob Lackner x4350

HOUSE BILL 12-1352

HOUSE SPONSORSHIP

Gardner B. and Gerou,

SENATE SPONSORSHIP

Cadman,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF A STATE COMMISSION TO ADDRESS**
102 **MATTERS ARISING OUT OF THE LOWER NORTH FORK WILDFIRE,**
103 **AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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>.)

The bill creates the lower north fork wildfire commission (commission), comprised of 6 members, for the purpose of:

- ! Receiving, hearing, and evaluating claims against the state of persons who have suffered personal or property damage

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.

HOUSE
3rd Reading Unamended
May 2, 2012

HOUSE
Amended 2nd Reading
May 1, 2012

or loss of life as a result of the lower north fork wildfire (wildfire);

- ! Investigating the causes of the wildfire; and
- ! Making recommendations for legislative or other action that would prevent the reoccurrence of this tragedy.

The bill specifies the members of the commission to be:

- ! The chairs of the judiciary committees of the senate and the house of representatives, or their designees;
- ! One member each from the senate and the house of representatives who is serving on the judiciary committee and is a member of the minority political party in the particular chamber, as selected by the respective minority leader in the senate and house;
- ! The executive director of the department of public safety; and
- ! The state treasurer.

The bill specifies administrative procedures of the commission.

In connection with its investigative functions, the bill specifies additional procedures attendant to this power and further requires the commission, not later than December 31, 2012, to submit a written report of its findings and any recommendations for legislative or other action to the judiciary and local government committees of the senate and the house of representatives.

In connection with the evaluation of potential claims, the bill specifies that the jurisdiction of the commission is limited to claims for injury to person or property or loss of life asserted against the state arising out of the wildfire.

The bill specifies procedures for filing a claim with the commission and the commission's powers and duties with respect to the evaluation of claims filed. Not later than September 30, 2012, any person claiming to have suffered an injury as a result of the wildfire is required to file a written notice of the person's claim. The bill specifies the contents of the notice. Compliance with this requirement is a jurisdictional prerequisite to filing a claim with the commission, and failure of compliance forever bars any such action. The bill specifies the required components of the claimant's petition. The bill authorizes the commission to retain special masters to assist in the evaluation of claims.

The bill requires the commission to make its findings of fact and recommendations for the disposition of each claim, including, without limitation, the extent and type of damages sustained, if any.

Upon the completion of its evaluation of the claims before it, the bill requires the commission to prepare a report containing a plan for the payment of claims. As soon as practicable after the commission has produced its report, it is required to file the report with the joint budget committee, along with copies of any supporting documentation used in

the preparation of the plan. All such documentation is to be made available to any member of the general assembly. Subject to available appropriations, the joint budget committee shall either:

- ! Recommend that the general assembly approve the plan recommended by the commission in its entirety or recommend that the general assembly make modifications to the plan; or
- ! Decline the plan recommended by the commission and take no action thereon.

The bill requires that any plan approved in its entirety or modified be presented for the consideration of the general assembly in the form of one or more appropriation bills.

The bill contains additional restrictions on an award that the state may provide a claimant.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 17 to article
3 2 of title 2 as follows:

4 **PART 17**

5 **LOWER NORTH FORK WILDFIRE COMMISSION**

6 **2-2-1701. Legislative declaration.** (1) THE GENERAL ASSEMBLY
7 HEREBY FINDS, DETERMINES, AND DECLARES THAT:

8 (a) IN MARCH 2012, A CONTROLLED BURN CONDUCTED BY THE
9 COLORADO STATE FOREST SERVICE IN THE LOWER NORTH FORK AREA OF
10 JEFFERSON COUNTY, COLORADO, RESULTED IN A WILDFIRE ON MARCH 26,
11 2012, THAT KILLED THREE PEOPLE, DESTROYED HOMES AND OTHER
12 STRUCTURES RESULTING IN EXTENSIVE PROPERTY DAMAGE, AND BURNED
13 MORE THAN ONE THOUSAND FOUR HUNDRED ACRES SOUTH OF CONIFER,
14 COLORADO. THE LOWER NORTH FORK WILDFIRE OCCURRING ON MARCH
15 26, 2012, IS REFERRED TO IN THIS PART 17 AS THE "WILDFIRE".

16 (b) AS A GENERAL PROPOSITION, THE STATE IS IMMUNE FROM
17 CLAIMS FOR INJURY ASSERTED AGAINST IT THAT LIE IN TORT OR THAT

1 COULD LIE IN TORT PURSUANT TO THE "COLORADO GOVERNMENTAL
2 IMMUNITY ACT", ARTICLE 10 OF TITLE 24, C.R.S., REFERRED TO IN THIS
3 PART 17 AS THE "ACT". WITH RESPECT TO THE WILDFIRE, IT IS NOT AT ALL
4 CLEAR THAT THE ACT WOULD PERMIT CLAIMS FOR INJURY TO PERSONS OR
5 PROPERTY OR LOSS OF LIFE ASSERTED AGAINST THE STATE ARISING FROM
6 THE WILDFIRE. THE GENERAL ASSEMBLY ASSERTS NO POSITION ON THE
7 ISSUE OF WHETHER THE ACT PERMITS ANY SUCH CLAIMS, AND NOTHING IN
8 THIS PART 17 SHALL BE CONSTRUED TO SUPPORT SUCH AN ASSERTION.
9 HOWEVER, IT IS APPROPRIATE THAT A MECHANISM BE CREATED WHEREBY
10 TIMELY EVALUATION MAY BE MADE OF POTENTIAL CLAIMS AGAINST THE
11 STATE FOR INJURY TO PERSONS OR PROPERTY OR LOSS OF LIFE ARISING OUT
12 OF THE WILDFIRE AND THAT A PLAN FOR FAIR AND JUST COMPENSATION
13 MAY BE PRESENTED TO THE GENERAL ASSEMBLY CONSISTENT WITH THE
14 AVAILABILITY OF MONEYS FOR SUCH PURPOSES AND THE OVERALL FISCAL
15 CONDITION OF THE STATE.

16 (c) INsofar AS THE ACT APPLIES TO THE CLAIMS FOR INJURY TO
17 PERSONS OR PROPERTY OR LOSS OF LIFE ARISING FROM THE WILDFIRE,
18 PROVISIONS OF THE ACT AND, SPECIFICALLY, SECTION 24-10-114 (1),
19 C.R.S., LIMIT DAMAGE RECOVERIES AGAINST THE STATE FOR ACTIONS
20 LYING IN TORT OR THAT COULD LIE IN TORT TO ONE HUNDRED FIFTY
21 THOUSAND DOLLARS FOR ANY INJURY TO ONE PERSON IN ANY SINGLE
22 OCCURRENCE AND TO SIX HUNDRED THOUSAND DOLLARS FOR AN INJURY
23 TO TWO OR MORE PERSONS IN ANY SINGLE OCCURRENCE. ASSUMING THE
24 GENERAL APPLICABILITY OF THE ACT TO THESE CLAIMS, THESE DAMAGE
25 CAPS FAIL TO PROVIDE DECENT OR MERELY ADEQUATE COMPENSATION TO
26 THE LARGE NUMBER OF PERSONS WHO WOULD BE IN A POSITION TO FILE
27 CLAIMS AGAINST THE STATE FOR THEIR LOSSES OR DAMAGES RESULTING

1 FROM THE WILDFIRE. THE WILDFIRE PRESENTS A UNIQUE SITUATION
2 REQUIRING SPECIAL CONSIDERATION.

3 (d) THE IMPACT ON THE AFFECTED COMMUNITY RESULTING FROM
4 THE WILDFIRE INCLUDES NOT ONLY LOSS OF LIFE AND FINANCIAL
5 DEVASTATION BUT ALSO A LOSS OF CONFIDENCE BY PERSONS AFFECTED IN
6 THE ABILITY OF THE STATE AND OTHER EMERGENCY RESPONDERS TO
7 RESPOND TO THIS OR OTHER DISASTERS THAT MAY OCCUR IN THE FUTURE.
8 ACCORDINGLY, IT IS AN APPROPRIATE USE OF THE PLENARY POWER OF THE
9 GENERAL ASSEMBLY TO EMPOWER A BODY SUCH AS THE COMMISSION
10 CREATED UNDER THIS PART 17 TO INVESTIGATE THE CAUSES OF THE
11 WILDFIRE AND TO MAKE RECOMMENDATIONS FOR LEGISLATIVE OR OTHER
12 ACTION THAT WOULD PREVENT THE OCCURRENCE OF A SIMILAR TRAGEDY.

13 (2) BY THIS PART 17, THE GENERAL ASSEMBLY INTENDS TO CREATE
14 A COMMISSION TO RECOMMEND A PLAN FOR THE FAIR AND JUST
15 COMPENSATION OF PERSONS WHO HAVE SUFFERED PERSONAL OR PROPERTY
16 DAMAGE OR LOSS OF LIFE AS A RESULT OF THE WILDFIRE CONSISTENT WITH
17 THE AVAILABILITY OF MONEYS FOR SUCH PURPOSES AND THE OVERALL
18 FISCAL CONDITION OF THE STATE AND TO PERFORM THE OTHER PURPOSES
19 ASSIGNED TO IT UNDER THIS PART 17. THE PROVISIONS OF THIS PART 17
20 SHALL BE LIBERALLY CONSTRUED TO ACHIEVE THE INTENT OF THE
21 GENERAL ASSEMBLY AS SPECIFIED IN THIS SUBSECTION (2).

22 **2-2-1702. Definition.** AS USED IN THIS PART 17, UNLESS THE
23 CONTEXT OTHERWISE REQUIRES, "STATE" MEANS THE STATE; EVERY
24 EXECUTIVE DEPARTMENT, BOARD, COMMISSION, COMMITTEE, BUREAU,
25 AND OFFICE; EVERY STATE INSTITUTION OF HIGHER EDUCATION, WHETHER
26 ESTABLISHED BY THE STATE CONSTITUTION OR BY LAW, AND EVERY
27 GOVERNING BOARD THEREOF; AND EVERY INDEPENDENT COMMISSION AND

1 OTHER POLITICAL SUBDIVISION OF THE STATE GOVERNMENT EXCEPT THE
2 COURTS.

3 **2-2-1703. Lower north fork wildfire commission - created -**
4 **membership - chair - meetings - quorum - reimbursement of expenses**
5 **- staff assistance - public meetings.** (1) THE LOWER NORTH FORK
6 WILDFIRE COMMISSION, REFERRED TO IN THIS PART 17 AS THE
7 "COMMISSION", IS HEREBY CREATED. THE COMMISSION IS COMPRISED OF
8 THE FOLLOWING SIX MEMBERS:

9 (a) THE CHAIRS OF THE JUDICIARY COMMITTEES OF THE SENATE
10 AND THE HOUSE OF REPRESENTATIVES, OR THEIR DESIGNEES;

11 (b) ONE MEMBER EACH FROM THE SENATE AND THE HOUSE OF
12 REPRESENTATIVES WHO IS SERVING ON THE JUDICIARY COMMITTEE AND IS
13 A MEMBER OF THE MINORITY POLITICAL PARTY IN THE PARTICULAR
14 CHAMBER, AS SELECTED BY THE RESPECTIVE MINORITY LEADER IN THE
15 SENATE AND HOUSE OF REPRESENTATIVES;

16 (c) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC
17 SAFETY CREATED IN SECTION 24-33.5-103 (1), C.R.S.; AND

18 (d) THE STATE TREASURER.

19 (2) THE CHAIRS OF THE SENATE AND HOUSE JUDICIARY
20 COMMITTEES, OR THEIR DESIGNEES, SHALL SERVE AS CHAIR AND
21 VICE-CHAIR OF THE COMMISSION. COMMENCING WITH THE EFFECTIVE
22 DATE OF THIS PART 17, THE CHAIR OF THE HOUSE JUDICIARY COMMITTEE
23 SHALL SERVE AS THE INITIAL CHAIR OF THE COMMISSION, AND THE CHAIR
24 OF THE SENATE JUDICIARY COMMITTEE SHALL SERVE AS THE VICE-CHAIR.
25 ON JANUARY 1, 2014, THE CHAIR OF THE SENATE JUDICIARY COMMITTEE
26 SHALL BECOME THE CHAIR OF THE COMMISSION AND THE CHAIR OF THE
27 HOUSE JUDICIARY COMMITTEE SHALL BECOME THE VICE-CHAIR OF THE

1 COMMISSION. THE COMMISSION MAY PROMULGATE AND AMEND RULES
2 GOVERNING ITS PROCEDURES. THE COMMISSION SHALL MEET AT SUCH
3 TIME AND SUCH PLACE AS DESIGNATED BY THE CHAIR; EXCEPT THAT THE
4 FIRST MEETING OF THE COMMISSION SHALL TAKE PLACE NOT LATER THAN
5 JULY 1, 2012. A MAJORITY OF THE MEMBERS OF THE COMMISSION SHALL
6 CONSTITUTE A QUORUM. THE CONCURRENCE OF AT LEAST FOUR MEMBERS
7 OF THE COMMISSION IS NECESSARY FOR THE APPROVAL OF ANY ACTION BY
8 THE COMMISSION.

9 (3) MEMBERS OF THE COMMISSION SHALL RECEIVE NO
10 COMPENSATION FOR SERVING ON THE COMMISSION; EXCEPT THAT
11 COMMISSION MEMBERS ARE ENTITLED TO REIMBURSEMENT FOR THEIR
12 ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF
13 THEIR OFFICIAL DUTIES. IN THE CASE OF THE LEGISLATIVE MEMBERS OF
14 THE COMMISSION, IN CONNECTION WITH THEIR NECESSARY ATTENDANCE
15 AT MEETINGS OF THE COMMISSION, SUCH MEMBERS ARE ENTITLED TO
16 RECEIVE THE AMOUNT SPECIFIED IN SECTION 2-2-307 (3) (a) (I) FOR
17 NECESSARY ATTENDANCE AT A MEETING OF AN INTERIM COMMITTEE.

18 (4) SUBJECT TO THE PROVISIONS OF PART 4 OF ARTICLE 6 OF TITLE
19 24, C.R.S., MEETINGS OF THE COMMISSION ARE PUBLIC MEETINGS.

20 (5) ANY STAFF ASSISTANCE REQUIRED BY THE COMMISSION SHALL
21 BE PERFORMED BY EXISTING EMPLOYEES OF THE LEGISLATIVE STAFF
22 AGENCIES OF THE GENERAL ASSEMBLY OR THE DEPARTMENT OF THE
23 TREASURY OR THE DEPARTMENT OF PUBLIC SAFETY WITHIN EXISTING
24 APPROPRIATIONS.

25 **2-2-1704. Investigation of causes of wildfire -**
26 **recommendations for legislative or other action - report to general**
27 **assembly.** (1) IN ADDITION TO ANY OTHER DUTIES AND RESPONSIBILITIES

1 DELEGATED THE COMMISSION UNDER THIS PART 17, DURING THE 2012
2 LEGISLATIVE INTERIM THE COMMISSION SHALL ALSO INVESTIGATE, REPORT
3 ITS FINDINGS, AND MAKE RECOMMENDATIONS FOR LEGISLATIVE OR OTHER
4 ACTION ON ALL MATTERS RELATING TO CAUSES OF THE WILDFIRE,
5 INCLUDING, WITHOUT LIMITATION, THE IMPACT ON THE AFFECTED
6 COMMUNITY CAUSED BY THE WILDFIRE, THE LOSS OF LIFE AND FINANCIAL
7 DEVASTATION INCURRED BY THE COMMUNITY, THE LOSS OF CONFIDENCE
8 BY THE COMMUNITY IN THE RESPONSE TO THE EMERGENCY BY
9 GOVERNMENTAL BODIES AT ALL LEVELS, AND MEASURES TO PREVENT THE
10 OCCURRENCE OF A SIMILAR TRAGEDY. IN CONNECTION WITH THIS DUTY,
11 THE COMMISSION SHALL SOLICIT AND ACCEPT REPORTS AND TAKE
12 TESTIMONY AT ONE OR MORE PUBLIC HEARINGS HELD FOR SUCH PURPOSES.
13 THE COMMISSION MAY SOLICIT OTHER SOURCES, INCLUDING, WITHOUT
14 LIMITATION, REPRESENTATIVES FROM STATE AND LOCAL GOVERNMENTS
15 AND ORGANIZATIONS OF CITIZENS, TO PROVIDE TESTIMONY, WRITTEN
16 COMMENTS, AND OTHER RELEVANT INFORMATION.

17 (2) NOT LATER THAN DECEMBER 31, 2012, THE COMMISSION SHALL
18 SUBMIT A WRITTEN REPORT OF ITS FINDINGS AND ANY RECOMMENDATIONS
19 MADE PURSUANT TO THIS SECTION FOR LEGISLATIVE OR OTHER ACTION TO
20 THE JUDICIARY AND LOCAL GOVERNMENT COMMITTEES OF THE SENATE
21 AND THE HOUSE OF REPRESENTATIVES. UPON THE REQUEST OF ANY
22 MEMBER OF THE COMMISSION, SUMMARIES OF DISSENTING OPINIONS SHALL
23 BE PREPARED AND ATTACHED TO THE FINAL REPORT OF THE COMMISSION'S
24 FINDINGS AND RECOMMENDATIONS. THE FINAL REPORT REQUIRED BY THIS
25 SUBSECTION (2) SHALL SATISFY THE REQUIREMENTS OF SECTION 24-1-136
26 (9), C.R.S.

27 **2-2-1705. Jurisdiction of commission.** THE JURISDICTION OF THE

1 COMMISSION UNDER THIS PART 17 SHALL EXTEND ONLY TO CLAIMS FOR
2 INJURY TO PERSON OR PROPERTY OR LOSS OF LIFE ASSERTED AGAINST THE
3 STATE ARISING OUT OF THE WILDFIRE. THE JURISDICTION OF THE
4 COMMISSION DOES NOT EXTEND TO ANY OTHER CLAIM FOR WHICH A
5 REMEDY IS PROVIDED BY LAW OR THAT IS GOVERNED SPECIFICALLY BY A
6 CONSTITUTIONAL OR OTHER STATUTORY ENACTMENT OR FOR WHICH AN
7 ADMINISTRATIVE HEARING PROCEDURE IS OTHERWISE PROVIDED BY LAW.

8 **2-2-1706. Procedure for asserting a claim with the commission**
9 **- deadline for filing notice of claim - actions on claims - hearings -**
10 **decisions - findings of fact - recommendations for the disposition of**
11 **claims - actions by general assembly on claims.** (1) NOT LATER THAN
12 SEPTEMBER 30, 2012, ANY PERSON CLAIMING TO HAVE SUFFERED AN
13 INJURY AS A RESULT OF THE WILDFIRE SHALL FILE A WRITTEN NOTICE OF
14 THE PERSON'S CLAIM THAT SATISFIES THE REQUIREMENTS OF THIS SECTION.
15 THE NOTICE SHALL CONTAIN A SHORT AND PLAIN STATEMENT OF THE
16 BASIS OF THE CLAIM AND SUCH ADDITIONAL INFORMATION AS MAY BE
17 REQUESTED BY THE COMMISSION. COMPLIANCE WITH THE PROVISIONS OF
18 THIS SUBSECTION (1) SHALL BE A JURISDICTIONAL PREREQUISITE TO FILING
19 A CLAIM WITH THE COMMISSION, AND FAILURE OF COMPLIANCE SHALL
20 FOREVER BAR ANY SUCH ACTION.

21 (2) (a) ANY PERSON ELECTING TO PRESENT A CLAIM AGAINST THE
22 STATE AS AUTHORIZED BY THIS PART 17 SHALL FILE SUCH CLAIM WITH THE
23 COMMISSION IN THE FORM OF A PETITION IN A FORM APPROVED BY THE
24 COMMISSION FOR SUCH PURPOSES. THE PETITION SHALL INCLUDE THE
25 FOLLOWING INFORMATION:

26 (I) THE NAME AND ADDRESS OF THE CLAIMANT; THE NAME AND
27 ADDRESS OF THE CLAIMANT'S PRINCIPAL, IF THE CLAIMANT IS ACTING IN A

1 REPRESENTATIVE CAPACITY; AND THE NAME AND ADDRESS OF THE
2 CLAIMANT'S ATTORNEY IF THE CLAIMANT IS SO REPRESENTED;

3 (II) A CONCISE STATEMENT OF THE BASIS OF THE CLAIM,
4 INCLUDING THE DATE, TIME, PLACE, AND CIRCUMSTANCES OF THE ACTION
5 OR EVENT GIVING RISE TO THE CLAIM;

6 (III) A DETAILED STATEMENT ITEMIZING THE DAMAGES CLAIMED;

7 (IV) A STATEMENT EXECUTED BY THE CLAIMANT
8 ACKNOWLEDGING THAT, BY FILING A CLAIM WITH THE COMMISSION, THE
9 CLAIMANT UNDERSTANDS THAT THE CLAIMANT IS THEREBY WAIVING ANY
10 RIGHT TO FILE A CIVIL ACTION AGAINST THE STATE, INCLUDING, WITHOUT
11 LIMITATION, AN ACTION AGAINST THE STATE ARISING UNDER 42 U.S.C.
12 SEC. 1983, ADDRESSING THE SAME SUBJECT MATTER AS THE CLAIM; AND

13 (V) ANY OTHER INFORMATION PERTINENT TO THE CLAIM AS MAY
14 BE REQUESTED BY THE COMMISSION.

15 (b) ALL CLAIMS FILED WITH THE COMMISSION SHALL BE
16 DESIGNATED BY A UNIQUE FILE NUMBER.

17 (3) EACH CLAIM SHALL BE CONSIDERED BY THE COMMISSION AS
18 SOON AS PRACTICABLE AFTER IT IS FILED. IF THE COMMISSION DEEMS A
19 HEARING TO BE NECESSARY OR ADVISABLE ON ANY CLAIM, THE
20 COMMISSION SHALL GIVE THE CLAIMANT AND THE STATE AGENCY
21 INVOLVED, IF ANY, AT LEAST FIFTEEN DAYS NOTICE BY CERTIFIED MAIL OF
22 THE TIME AND PLACE OF THE HEARING. HEARINGS MAY BE HELD AT ANY
23 AVAILABLE HEARING FACILITY IN THE STATE CAPITOL BUILDING OR AT ANY
24 SUITABLE LOCATION IN THE STATE THAT THE COMMISSION FINDS IS
25 CONVENIENT AND EQUITABLE TO THE CLAIMANT AND THE COMMISSION.
26 NOTHING IN THIS PART 17 SHALL BE CONSTRUED AS REQUIRING AN
27 EVIDENTIARY HEARING IN CONNECTION WITH THE EVALUATION OF ANY

1 PARTICULAR CLAIM IF THE COMMISSION OR SPECIAL MASTER, AS
2 APPLICABLE, DETERMINES THAT THE MATTER CAN BE FAIRLY AND
3 EQUITABLY RESOLVED ON THE BASIS OF THE WRITTEN RECORD; EXCEPT
4 THAT AN EVIDENTIARY HEARING SHALL BE HELD IF THE CLAIMANT
5 EXPLICITLY REQUESTS THE SAME.

6 (4) IN CONNECTION WITH ITS INVESTIGATIVE POWERS UNDER
7 SECTION 2-2-1704 (1) OR THE EVALUATION OF ANY CLAIM FILED WITH THE
8 COMMISSION PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE
9 COMMISSION MAY SUMMON WITNESSES, TAKE TESTIMONY UNDER OATH,
10 TO BE ADMINISTERED BY ANY MEMBER, AND ASSEMBLE SUCH RECORDS
11 AND DOCUMENTS AS MAY IN ITS DISCRETION BE DEEMED NECESSARY, WITH
12 THE SAME POWER AND AUTHORITY AS COURTS OF RECORD IN HEARING
13 CIVIL ACTIONS. THE COMMISSION MAY SUBPOENA DOCUMENTS AND
14 WITNESSES TO MAKE STATEMENTS AND PRODUCE DOCUMENTS ON A
15 MOTION TO ISSUE A SUBPOENA THAT HAS BEEN APPROVED BY AT LEAST
16 FOUR MEMBERS OF THE COMMISSION. THE COMMISSION MAY RETAIN AND
17 EMPLOY ONE OR MORE SPECIAL MASTERS AS NECESSARY TO ENABLE IT TO
18 EXECUTE ANY OF THE POWERS DELEGATED TO IT UNDER THIS SECTION.
19 ANY SUCH SPECIAL MASTER SHALL BE EXPERIENCED IN THE EVALUATION
20 OF SIMILAR OR RELATED CLAIMS.

21 (5) IN CONNECTION WITH ANY HEARING IT CONDUCTS UNDER THIS
22 PART 17 ON THE EVALUATION OF A CLAIM, THE COMMISSION IS NOT BOUND
23 BY THE STRICT RULES OF EVIDENCE, EXCEPT AS IT MAY BE PROVIDED BY
24 ITS OWN RULES, BUT SHALL CONDUCT ALL HEARINGS PUBLICLY AND IN A
25 FAIR AND IMPARTIAL MANNER, GIVING THE PARTIES THE FULL
26 OPPORTUNITY FOR THE PRESENTATION OF EVIDENCE, CROSS EXAMINATION
27 OF WITNESSES, AND ARGUMENT. THE COMMISSION SHALL EVALUATE

1 CLAIMS ON ANY REASONABLE BASIS IT FINDS APPROPRIATE UNDER THE
2 TOTALITY OF THE CIRCUMSTANCES.

3 (6) UPON THE COMPLETION OF ITS EVALUATION OF THE CLAIMS
4 BEFORE IT, THE COMMISSION SHALL PREPARE A REPORT CONTAINING A
5 PLAN FOR THE PAYMENT OF CLAIMS. AS SOON AS PRACTICABLE AFTER THE
6 COMMISSION HAS PRODUCED ITS REPORT, THE COMMISSION SHALL FILE THE
7 REPORT WITH THE JOINT BUDGET COMMITTEE, ALONG WITH COPIES OF ANY
8 SUPPORTING DOCUMENTATION THAT WAS USED IN THE PREPARATION OF
9 THE PLAN. ALL SUCH DOCUMENTATION SHALL BE MADE AVAILABLE TO
10 ANY MEMBER OF THE GENERAL ASSEMBLY. SUBJECT TO AVAILABLE
11 APPROPRIATIONS, THE JOINT BUDGET COMMITTEE SHALL EITHER:

12 (a) RECOMMEND THAT THE GENERAL ASSEMBLY APPROVE THE
13 PLAN RECOMMENDED BY THE COMMISSION IN ITS ENTIRETY OR
14 RECOMMEND THAT THE GENERAL ASSEMBLY MODIFY THE PLAN; OR

15 (b) DECLINE THE PLAN RECOMMENDED BY THE COMMISSION AND
16 TAKE NO ACTION THEREON.

17 (7) ANY PLAN APPROVED IN ITS ENTIRETY OR MODIFIED PURSUANT
18 TO PARAGRAPH (a) OF SUBSECTION (6) OF THIS SECTION SHALL BE
19 PRESENTED FOR THE CONSIDERATION OF THE GENERAL ASSEMBLY IN THE
20 FORM OF ONE OR MORE APPROPRIATION BILLS.

21 (8) NOTHING IN THIS PART 17 SHALL BE CONSTRUED TO REQUIRE
22 THE PAYMENT OF ANY CLAIM BY THE STATE.

23 **2-2-1707. Limitations on claims - finality of claim - release.**

24 (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW:

25 (a) ANY AWARD TO BE PAID A CLAIMANT BY THE STATE IN
26 ACCORDANCE WITH THE REQUIREMENTS OF THIS PART 17 SHALL BE
27 REDUCED TO THE EXTENT THE CLAIMANT'S LOSS IS BEING COVERED BY

1 ANOTHER SOURCE, INCLUDING, WITHOUT LIMITATION, ANY INSURANCE
2 PROCEEDS THAT HAVE BEEN PAID, OR WILL BE PAID, TO THE CLAIMANT,
3 AND NO INSURER SHALL HAVE A RIGHT OF SUBROGATION AGAINST THE
4 CLAIMANT FOR ANY AWARD PAID UNDER THIS PART 17.

5 (b) NONECONOMIC LOSS OR INJURY SUFFERED BY A CLAIMANT
6 SHALL NOT BE RECOVERABLE IN AN AWARD PAID UNDER THIS PART 17.

7 (c) NO PORTION OF THE AMOUNT OF ANY AWARD PAID UNDER THIS
8 PART 17 SHALL COVER ANY OF THE CLAIMANT'S ATTORNEY FEES.

9 (d) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE
10 A PROSPECTIVE CLAIMANT TO SEEK THE RELIEF AUTHORIZED BY THIS PART
11 17 TO THE EXCLUSION OF ALL OTHER CIVIL REMEDIES PROVIDED BY LAW;
12 EXCEPT THAT A CLAIMANT WHO FILES A CLAIM WITH THE COMMISSION IN
13 ACCORDANCE WITH THE REQUIREMENTS OF THIS PART 17 IS BARRED FROM
14 FILING AN ACTION AGAINST THE STATE, INCLUDING, WITHOUT LIMITATION,
15 AN ACTION AGAINST THE STATE ARISING UNDER 42 U.S.C. SEC. 1983,
16 ADDRESSING THE SAME SUBJECT MATTER IN A STATE COURT.

17 (e) THE ACCEPTANCE BY A CLAIMANT OF ANY AWARD,
18 COMPROMISE, OR SETTLEMENT ON ANY CLAIM UNDER THE PROVISIONS OF
19 THIS PART 17 SHALL BE FINAL AND CONCLUSIVE ON THE CLAIMANT AND
20 CONSTITUTE A COMPLETE RELEASE OF ANY CLAIM THE CLAIMANT HAS OR
21 MAY HAVE AGAINST THE STATE OR A LOCAL GOVERNMENT, INCLUDING A
22 SPECIAL DISTRICT, OR ANY OF THE EMPLOYEES OF THE STATE OR LOCAL
23 GOVERNMENT, WHOSE ALLEGED ACTION OR OMISSION GAVE RISE TO THE
24 CLAIM.

25 **2-2-1708. Miscellaneous provisions - repeal of part.**

26 (1) NOTHING IN THIS PART 17 IS INTENDED OR SHALL BE CONSTRUED TO
27 ALTER THE PROVISIONS OF THE ACT.

1 (2) THIS PART 17 IS REPEALED, EFFECTIVE JULY 1, 2014.

2 **SECTION 2. Appropriation.** In addition to any other
3 appropriation, there is hereby appropriated, out of any moneys in the
4 general fund not otherwise appropriated, to the Legislative Department,
5 for the fiscal year beginning July 1, 2012, the sum of \$25,832 and 0.4
6 FTE, or so much thereof as may be necessary, for the implementation of
7 this act.

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