

First Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO

DRAFT  
9.6.18

Bill 9

LLS NO. 19-0137.01 Bob Lackner x4350

INTERIM COMMITTEE BILL

Water Resources Review Committee

**BILL TOPIC: "No Waiver Sovereign Immunity Prescribed Fires"**

**A BILL FOR AN ACT**

101 **CONCERNING THE RETENTION BY THE STATE OF SOVEREIGN IMMUNITY**  
102 **IN AN ACTION FOR INJURIES RESULTING FROM A PRESCRIBED**  
103 **FIRE OPERATED BY THE STATE.**

**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://leg.colorado.gov/>.)*

**Water Resources Review Committee.** Under current law, the state waives sovereign immunity 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. Under the bill, the state does not waive sovereign immunity in an action for injuries resulting from a prescribed

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

fire, including without limitation, broadcast burns or slash pile burns, started or maintained by the state or any of its employees on or after the effective date of the bill.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly  
3 hereby finds that:

4 (a) Colorado's water supplies and the quality and quantity of water  
5 that flows from forested watersheds are critical to the citizens and  
6 economy of the state;

7 (b) Over the past two decades, Colorado has experienced  
8 increasing numbers of large, high-severity wildfires and unprecedented  
9 levels of mortality from insects and diseases;

10 (c) Fifty percent of Colorado's forests are at moderate to high risk  
11 of wildfire; and

12 (d) Projections of increased levels of disturbance frequency and  
13 severity have therefore created concerns regarding the sustained delivery  
14 of clean water from Colorado's headwater forests.

15 (2) The general assembly further determines that:

16 (a) Science-based forest management may reduce forest hazardous  
17 fuels linked to wildfire risk and severe fire behavior and may create forest  
18 stand conditions that are more resilient and less susceptible to insects and  
19 diseases;

20 (b) Active forest management treatments aimed at improving  
21 forest health and watershed conditions and protecting human safety,  
22 homes, and infrastructure play an important role in reducing costs to  
23 communities, citizens, water providers, and users;

24 (c) All forest management tools should be available to address

1 forest conditions in Colorado; and

2 (d) Fire has played a significant role in shaping the forests of  
3 Colorado.

4 (3) By enacting this act, the general assembly intends to provide  
5 direction to protect water supplies and forested watersheds by authorizing  
6 the use of all forest management tools available and where applicable,  
7 including the use of prescribed fire, to help improve the health and  
8 resilience of Colorado's forests.

9 **SECTION 2.** In Colorado Revised Statutes, 24-10-106.1, **amend**  
10 (1) as follows:

11 **24-10-106.1. Immunity and partial waiver - claims against the**  
12 **state - injuries from prescribed fire - on or after January 1, 2012.**

13 (1) Notwithstanding any other provision of this ~~article~~ ARTICLE 10, the  
14 state ~~shall be~~ IS immune from liability in all claims for injury that lie in  
15 tort or could lie in tort regardless of whether that may be the type of  
16 action or the form of relief chosen by the claimant except as provided  
17 otherwise in this section or section 24-10-106. In addition to any other  
18 claims for which the state waives immunity under this ~~article~~ ARTICLE 10,  
19 sovereign immunity is waived by the state in an action for injuries  
20 resulting from a prescribed fire started or maintained by the state or any  
21 of its employees on or after January 1, 2012, BUT PRIOR TO THE EFFECTIVE  
22 DATE OF THIS SECTION, AS AMENDED. THE STATE DOES NOT WAIVE  
23 SOVEREIGN IMMUNITY IN AN ACTION FOR INJURIES RESULTING FROM A  
24 PRESCRIBED FIRE, INCLUDING WITHOUT LIMITATION BROADCAST BURNS OR  
25 SLASH PILE BURNS, STARTED OR MAINTAINED BY THE STATE OR ANY OF ITS  
26 EMPLOYEES ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION, AS  
27 AMENDED.

1           **SECTION 3. Applicability.** This act applies to civil actions  
2 commenced on or after the effective date of this act.

3           **SECTION 4. Safety clause.** The general assembly hereby finds,  
4 determines, and declares that this act is necessary for the immediate  
5 preservation of the public peace, health, and safety.