

AMENDMENTS TO LB 589

Introduced by Smith

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Section 13-901, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 13-901 Sections 13-901 to 13-927 and section 3 of this
6 act shall be known and may be cited as the Political Subdivisions
7 Tort Claims Act.

8 Sec. 2. Section 13-910, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 13-910 The Political Subdivisions Tort Claims Act and
11 sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall not apply
12 to:

13 (1) Any claim based upon an act or omission of an
14 employee of a political subdivision, exercising due care, in
15 the execution of a statute, ordinance, or officially adopted
16 resolution, rule, or regulation, whether or not such statute,
17 ordinance, resolution, rule, or regulation is valid;

18 (2) Any claim based upon the exercise or performance of
19 or the failure to exercise or perform a discretionary function or
20 duty on the part of the political subdivision or an employee of the
21 political subdivision, whether or not the discretion is abused;

22 (3) Any claim based upon the failure to make an
23 inspection or making an inadequate or negligent inspection of

1 any property other than property owned by or leased to such
2 political subdivision to determine whether the property complies
3 with or violates any statute, ordinance, rule, or regulation or
4 contains a hazard to public health or safety unless the political
5 subdivision had reasonable notice of such hazard or the failure
6 to inspect or inadequate or negligent inspection constitutes a
7 reckless disregard for public health or safety;

8 (4) Any claim based upon the issuance, denial,
9 suspension, or revocation of or failure or refusal to issue,
10 deny, suspend, or revoke any permit, license, certificate, or
11 order. Nothing in this subdivision shall be construed to limit
12 a political subdivision's liability for any claim based upon the
13 negligent execution by an employee of the political subdivision
14 in the issuance of a certificate of title under the Motor Vehicle
15 Certificate of Title Act and the State Boat Act;

16 (5) Any claim arising with respect to the assessment or
17 collection of any tax or fee or the detention of any goods or
18 merchandise by any law enforcement officer;

19 (6) Any claim caused by the imposition or establishment
20 of a quarantine by the state or a political subdivision, whether
21 such quarantine relates to persons or property;

22 (7) Any claim arising out of assault, battery, false
23 arrest, false imprisonment, malicious prosecution, abuse of
24 process, libel, slander, misrepresentation, deceit, or interference
25 with contract rights;

26 (8) Any claim by an employee of the political subdivision
27 which is covered by the Nebraska Workers' Compensation Act;

1 (9) Any claim arising out of the malfunction,
2 destruction, or unauthorized removal of any traffic or road sign,
3 signal, or warning device unless it is not corrected by the
4 political subdivision responsible within a reasonable time after
5 actual or constructive notice of such malfunction, destruction, or
6 removal. Nothing in this subdivision shall give rise to liability
7 arising from an act or omission of any political subdivision
8 in placing or removing any traffic or road signs, signals, or
9 warning devices when such placement or removal is the result of a
10 discretionary act of the political subdivision;

11 (10) Any claim arising out of snow or ice conditions
12 or other temporary conditions caused by nature on any highway as
13 defined in section 60-624, bridge, public thoroughfare, or other
14 public place due to weather conditions. Nothing in this subdivision
15 shall be construed to limit a political subdivision's liability
16 for any claim arising out of the operation of a motor vehicle
17 by an employee of the political subdivision while acting within
18 the course and scope of his or her employment by the political
19 subdivision;

20 (11) Any claim arising out of the plan or design for
21 the construction of or an improvement to any highway as defined
22 in such section or bridge, either in original construction or any
23 improvement thereto, if the plan or design is approved in advance
24 of the construction or improvement by the governing body of the
25 political subdivision or some other body or employee exercising
26 discretionary authority to give such approval;

27 (12) Any claim arising out of the alleged insufficiency

1 or want of repair of any highway as defined in such section,
2 bridge, or other public thoroughfare. Insufficiency or want of
3 repair shall be construed to refer to the general or overall
4 condition and shall not refer to a spot or localized defect. A
5 political subdivision shall be deemed to waive its immunity for a
6 claim due to a spot or localized defect only if (a) the political
7 subdivision has had actual or constructive notice of the defect
8 within a reasonable time to allow repair prior to the incident
9 giving rise to the claim or (b) the claim arose during the
10 time specified in a notice provided by the political subdivision
11 pursuant to subsection (3) of section 39-1359 and the state or
12 political subdivision had actual or constructive notice; or

13 (13) (a) Any claim relating to recreational activities for
14 which no fee is charged (i) resulting from the inherent risk of
15 the recreational activity, (ii) arising out of a spot or localized
16 defect of the premises unless the spot or localized defect is
17 not corrected by the political subdivision leasing, owning, or
18 in control of the premises within a reasonable time after actual
19 or constructive notice of the spot or localized defect, or (iii)
20 arising out of the design of a skatepark or bicycle motocross
21 park constructed for purposes of skateboarding, inline skating,
22 bicycling, or scootering that was constructed or reconstructed,
23 reasonably and in good faith, in accordance with generally
24 recognized engineering or safety standards or design theories
25 in existence at the time of the construction or reconstruction.
26 For purposes of this subdivision, a political subdivision shall be
27 charged with constructive notice only when the failure to discover

1 the spot or localized defect of the premises is the result of gross
2 negligence.

3 (b) For purposes of this subdivision:

4 (i) Recreational activities include, but are not limited
5 to, whether as a participant or spectator: Hunting, fishing,
6 swimming, boating, camping, picnicking, hiking, walking, running,
7 horseback riding, use of trails, nature study, waterskiing, winter
8 sports, use of playground equipment, biking, roller blading,
9 skateboarding, golfing, athletic contests; visiting, viewing,
10 or enjoying entertainment events, festivals, or historical,
11 archaeological, scenic, or scientific sites; and similar leisure
12 activities;

13 (ii) Inherent risk of recreational activities means those
14 risks that are characteristic of, intrinsic to, or an integral part
15 of the activity;

16 (iii) Gross negligence means the absence of even slight
17 care in the performance of a duty involving an unreasonable risk of
18 harm; and

19 (iv) Fee means a fee to participate in or be a spectator
20 at a recreational activity. A fee shall include payment by the
21 claimant to any person or organization other than the political
22 subdivision only to the extent the political subdivision retains
23 control over the premises or the activity. A fee shall not include
24 payment of a fee or charge for parking or vehicle entry.

25 (c) This subdivision, and not subdivision (3) of this
26 section, shall apply to any claim arising from the inspection
27 or failure to make an inspection or negligent inspection of

1 premises owned or leased by the political subdivision and used for
2 recreational activities.

3 Sec. 3. The Political Subdivisions Tort Claims Act shall
4 apply to any claim arising during the time specified in a notice
5 provided by a political subdivision pursuant to subsection (3) of
6 section 39-1359.

7 Sec. 4. Section 39-1359, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 39-1359 (1) The rights-of-way acquired by the department
10 shall be held inviolate for state highway and departmental purposes
11 and no physical or functional encroachments, structures, or uses
12 shall be permitted within such right-of-way limits, except by
13 written consent of the department or as otherwise provided in
14 subsections (2) and (3) of this section.

15 (2) A temporary use of the state highway system, other
16 than a freeway, by a county, city, or village, including full
17 and partial lane closures, shall be allowed for special events,
18 as designated by a county, city, or village, under the following
19 conditions:

20 (a) The roadway is located within the official corporate
21 limits or zoning jurisdiction of the county, city, or village;

22 (b) A county, city, or village making use of the state
23 highway system for a special event shall have the legal duty to
24 protect the highway property from any damage that may occur arising
25 out of the special event and the state shall not have any such duty
26 during the time the county, city, or village is in control of the
27 property as specified in the notice provided pursuant to subsection

1 (3) of this section;

2 (c) Any existing statutory or common law duty of the
3 state to protect the public from damage, injury, or death shall
4 become the duty of the county, city, or village making use of the
5 state highway system for the special event, and the state shall not
6 have such statutory or common law duty during the time the county,
7 city, or village is in control of the property as specified in the
8 notice provided pursuant to subsection (3) of this section; and

9 (d) The county, city, or village using the state highway
10 system for a special event shall formally, by official governing
11 body action, acknowledge that it accepts the duties set out above
12 and, if a claim is made against the state, shall indemnify, defend,
13 and hold harmless the state from all claims, demands, actions,
14 damages, and liability, including reasonable attorney's fees, that
15 may arise as a result of the special event.

16 (3) If a county, city, or village has met the
17 requirements of subsection (2) of this section for holding a
18 special event and has provided thirty-days' advance written notice
19 of the special event to the department, the county, city, or
20 village may proceed with its temporary use of the state highway
21 system. The notice shall specify the date and time the county,
22 city, or village will assume control of the state highway property
23 and relinquish control of such state highway property to the state.

24 (4) The Political Subdivisions Tort Claims Act shall
25 apply to any claim arising during the time specified in a notice
26 provided by a political subdivision pursuant to subsection (3) of
27 this section.

1 Sec. 5. Section 81-8,219, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 81-8,219 The State Tort Claims Act shall not apply to:

4 (1) Any claim based upon an act or omission of an
5 employee of the state, exercising due care, in the execution of a
6 statute, rule, or regulation, whether or not such statute, rule, or
7 regulation is valid, or based upon the exercise or performance or
8 the failure to exercise or perform a discretionary function or duty
9 on the part of a state agency or an employee of the state, whether
10 or not the discretion is abused;

11 (2) Any claim arising with respect to the assessment or
12 collection of any tax or fee, or the detention of any goods or
13 merchandise by any law enforcement officer;

14 (3) Any claim for damages caused by the imposition or
15 establishment of a quarantine by the state whether such quarantine
16 relates to persons or property;

17 (4) Any claim arising out of assault, battery, false
18 imprisonment, false arrest, malicious prosecution, abuse of
19 process, libel, slander, misrepresentation, deceit, or interference
20 with contract rights;

21 (5) Any claim by an employee of the state which is
22 covered by the Nebraska Workers' Compensation Act;

23 (6) Any claim based on activities of the Nebraska
24 National Guard when such claim is cognizable under the Federal
25 Tort Claims Act, 28 U.S.C. 2674, or the National Guard Tort Claims
26 Act of the United States, 32 U.S.C. 715, or when such claim accrues
27 as a result of active federal service or state service at the call

1 of the Governor for quelling riots and civil disturbances;

2 (7) Any claim based upon the failure to make an
3 inspection or making an inadequate or negligent inspection of
4 any property other than property owned by or leased to the state
5 to determine whether the property complies with or violates any
6 statute, ordinance, rule, or regulation or contains a hazard to
7 public health or safety unless the state had reasonable notice of
8 such hazard or the failure to inspect or inadequate or negligent
9 inspection constitutes a reckless disregard for public health or
10 safety;

11 (8) Any claim based upon the issuance, denial,
12 suspension, or revocation of or failure or refusal to issue, deny,
13 suspend, or revoke any permit, license, certificate, or order.
14 Such claim shall also not be filed against a state employee
15 acting within the scope of his or her office. Nothing in this
16 subdivision shall be construed to limit the state's liability for
17 any claim based upon the negligent execution by a state employee
18 in the issuance of a certificate of title under the Motor Vehicle
19 Certificate of Title Act and the State Boat Act;

20 (9) Any claim arising out of the malfunction,
21 destruction, or unauthorized removal of any traffic or road sign,
22 signal, or warning device unless it is not corrected by the
23 governmental entity responsible within a reasonable time after
24 actual or constructive notice of such malfunction, destruction, or
25 removal. Nothing in this subdivision shall give rise to liability
26 arising from an act or omission of any governmental entity
27 in placing or removing any traffic or road signs, signals, or

1 warning devices when such placement or removal is the result of a
2 discretionary act of the governmental entity;

3 (10) Any claim arising out of snow or ice conditions
4 or other temporary conditions caused by nature on any highway as
5 defined in section 60-624, bridge, public thoroughfare, or other
6 state-owned public place due to weather conditions. Nothing in this
7 subdivision shall be construed to limit the state's liability for
8 any claim arising out of the operation of a motor vehicle by an
9 employee of the state while acting within the course and scope of
10 his or her employment by the state;

11 (11) Any claim arising out of the plan or design for
12 the construction of or an improvement to any highway as defined
13 in such section or bridge, either in original construction or
14 any improvement thereto, if the plan or design is approved in
15 advance of the construction or improvement by the governing body of
16 the governmental entity or some other body or employee exercising
17 discretionary authority to give such approval;

18 (12) Any claim arising out of the alleged insufficiency
19 or want of repair of any highway as defined in such section,
20 bridge, or other public thoroughfare. Insufficiency or want of
21 repair shall be construed to refer to the general or overall
22 condition and shall not refer to a spot or localized defect. The
23 state shall be deemed to waive its immunity for a claim due to
24 a spot or localized defect only if the state has had actual or
25 constructive notice of the defect within a reasonable time to allow
26 repair prior to the incident giving rise to the claim; ~~or~~

27 (13) (a) Any claim relating to recreational activities on

1 property leased, owned, or controlled by the state for which no fee
2 is charged (i) resulting from the inherent risk of the recreational
3 activity, (ii) arising out of a spot or localized defect of the
4 premises unless the spot or localized defect is not corrected
5 within a reasonable time after actual or constructive notice of
6 the spot or localized defect, or (iii) arising out of the design
7 of a skatepark or bicycle motocross park constructed for purposes
8 of skateboarding, inline skating, bicycling, or scootering that
9 was constructed or reconstructed, reasonably and in good faith,
10 in accordance with generally recognized engineering or safety
11 standards or design theories in existence at the time of the
12 construction or reconstruction. For purposes of this subdivision,
13 the state shall be charged with constructive notice only when the
14 failure to discover the spot or localized defect of the premises is
15 the result of gross negligence.

16 (b) For purposes of this subdivision:

17 (i) Recreational activities include, but are not limited
18 to, whether as a participant or spectator: Hunting, fishing,
19 swimming, boating, camping, picnicking, hiking, walking, running,
20 horseback riding, use of trails, nature study, waterskiing, winter
21 sports, use of playground equipment, biking, roller blading,
22 skateboarding, golfing, athletic contests; visiting, viewing,
23 or enjoying entertainment events, festivals, or historical,
24 archaeological, scenic, or scientific sites; and similar leisure
25 activities;

26 (ii) Inherent risk of recreational activities means those
27 risks that are characteristic of, intrinsic to, or an integral part

1 of the activity;

2 (iii) Gross negligence means the absence of even slight
3 care in the performance of a duty involving an unreasonable risk of
4 harm; and

5 (iv) Fee means a fee to participate in or be a spectator
6 at a recreational activity. A fee shall include payment by the
7 claimant to any person or organization other than the state only
8 to the extent the state retains control over the premises or the
9 activity. A fee shall not include payment of a fee or charge for
10 parking or vehicle entry.

11 (c) This subdivision, and not subdivision (7) of this
12 section, shall apply to any claim arising from the inspection or
13 failure to make an inspection or negligent inspection of premises
14 owned or leased by the state and used for recreational activities.

15 (14) Any claim arising as a result of a special event
16 during a period of time specified in a notice provided by
17 a political subdivision pursuant to subsection (3) of section
18 39-1359.

19 Sec. 6. Original sections 13-901, 13-910, 39-1359, and
20 81-8,219, Reissue Revised Statutes of Nebraska, are repealed.

21 Sec. 7. Since an emergency exists, this act takes effect
22 when passed and approved according to law.