

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 589

Final Reading

Introduced by Smith, 14; Cook, 13.

Read first time January 19, 2011

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to state highways; to amend sections 13-901,
2 13-910, 39-1359, and 81-8,219, Reissue Revised Statutes
3 of Nebraska; to allow for temporary use of the state
4 highway system for special events held by a county, city,
5 or village as prescribed; to provide liability and duties
6 for the county, city, or village; to provide for
7 applicability of the Political Subdivisions Tort Claims
8 Act and the State Tort Claims Act; to harmonize
9 provisions; to repeal the original sections; and to
10 declare an emergency.
11 Be it enacted by the people of the State of Nebraska,

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

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

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

8 13-910 The Political Subdivisions Tort Claims Act and
9 sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall not apply
10 to:

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

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

20 (3) Any claim based upon the failure to make an
21 inspection or making an inadequate or negligent inspection of any
22 property other than property owned by or leased to such political
23 subdivision to determine whether the property complies with or
24 violates any statute, ordinance, rule, or regulation or contains a
25 hazard to public health or safety unless the political subdivision

1 had reasonable notice of such hazard or the failure to inspect or
2 inadequate or negligent inspection constitutes a reckless disregard
3 for public health or safety;

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

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

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

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

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

24 (9) Any claim arising out of the malfunction,
25 destruction, or unauthorized removal of any traffic or road sign,

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

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

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

24 (12) Any claim arising out of the alleged insufficiency
25 or want of repair of any highway as defined in such section, bridge,

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

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

1 failure to discover the spot or localized defect of the premises is
2 the result of gross 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, or
10 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

1 section, shall apply to any claim arising from the inspection or
2 failure to make an inspection or negligent inspection of premises
3 owned or leased by the political subdivision and used for
4 recreational activities.

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

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

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

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

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

24 (b) A county, city, or village making use of the state
25 highway system for a special event shall have the legal duty to

1 protect the highway property from any damage that may occur arising
2 out of the special event and the state shall not have any such duty
3 during the time the county, city, or village is in control of the
4 property as specified in the notice provided pursuant to subsection
5 (3) of this section;

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

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

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

1 will assume control of the state highway property and relinquish
2 control of such state highway property to the state.

3 (4) 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 this section.

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

9 81-8,219 The State Tort Claims Act shall not apply to:

10 (1) Any claim based upon an act or omission of an
11 employee of the state, exercising due care, in the execution of a
12 statute, rule, or regulation, whether or not such statute, rule, or
13 regulation is valid, or based upon the exercise or performance or the
14 failure to exercise or perform a discretionary function or duty on
15 the part of a state agency or an employee of the state, whether or
16 not the discretion is abused;

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

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

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

1 contract rights;

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

4 (6) Any claim based on activities of the Nebraska
5 National Guard when such claim is cognizable under the Federal Tort
6 Claims Act, 28 U.S.C. 2674, or the National Guard Tort Claims Act of
7 the United States, 32 U.S.C. 715, or when such claim accrues as a
8 result of active federal service or state service at the call of the
9 Governor for quelling riots and civil disturbances;

10 (7) Any claim based upon the failure to make an
11 inspection or making an inadequate or negligent inspection of any
12 property other than property owned by or leased to the state to
13 determine whether the property complies with or violates any statute,
14 ordinance, rule, or regulation or contains a hazard to public health
15 or safety unless the state had reasonable notice of such hazard or
16 the failure to inspect or inadequate or negligent inspection
17 constitutes a reckless disregard for public health or safety;

18 (8) Any claim based upon the issuance, denial,
19 suspension, or revocation of or failure or refusal to issue, deny,
20 suspend, or revoke any permit, license, certificate, or order. Such
21 claim shall also not be filed against a state employee acting within
22 the scope of his or her office. Nothing in this subdivision shall be
23 construed to limit the state's liability for any claim based upon the
24 negligent execution by a state employee in the issuance of a
25 certificate of title under the Motor Vehicle Certificate of Title Act

1 and the State Boat Act;

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

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

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

1 authority to give such approval;

2 (12) Any claim arising out of the alleged insufficiency
3 or want of repair of any highway as defined in such section, bridge,
4 or other public thoroughfare. Insufficiency or want of repair shall
5 be construed to refer to the general or overall condition and shall
6 not refer to a spot or localized defect. The state shall be deemed to
7 waive its immunity for a claim due to a spot or localized defect only
8 if the state has had actual or constructive notice of the defect
9 within a reasonable time to allow repair prior to the incident giving
10 rise to the claim; ~~or~~

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

1 negligence.

2 (b) For purposes of this subdivision:

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

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

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

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

24 (c) This subdivision, and not subdivision (7) of this
25 section, shall apply to any claim arising from the inspection or

1 failure to make an inspection or negligent inspection of premises
2 owned or leased by the state and used for recreational activities;
3 or -

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

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

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