

AMENDMENTS TO LB25

(Amendments to Standing Committee amendments, AM440)

Introduced by Wayne, 13.

1 1. Strike amendment 1 and insert the following new amendment:

2 1. Strike the original sections and insert the following new  
3 sections:

4 Section 1. Section 13-910, Reissue Revised Statutes of Nebraska, is  
5 amended to read:

6 13-910 The Political Subdivisions Tort Claims Act and sections  
7 16-727, 16-728, 23-175, 39-809, and 79-610 shall not apply to:

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

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

17 (3) Any claim based upon the failure to make an inspection or making  
18 an inadequate or negligent inspection of any property other than property  
19 owned by or leased to such political subdivision to determine whether the  
20 property complies with or violates any statute, ordinance, rule, or  
21 regulation or contains a hazard to public health or safety unless the  
22 political subdivision had reasonable notice of such hazard or the failure  
23 to inspect or inadequate or negligent inspection constitutes a reckless  
24 disregard for public health or safety;

25 (4) Any claim based upon the issuance, denial, suspension, or  
26 revocation of or failure or refusal to issue, deny, suspend, or revoke

1 any permit, license, certificate, or order. Nothing in this subdivision  
2 shall be construed to limit a political subdivision's liability for any  
3 claim based upon the negligent execution by an employee of the political  
4 subdivision in the issuance of a certificate of title under the Motor  
5 Vehicle Certificate of Title Act and the State Boat Act except when such  
6 title is issued upon an application filed electronically by an approved  
7 licensed dealer participating in the electronic dealer services system  
8 pursuant to section 60-1507;

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

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

15 (7) Any claim arising out of the following acts: Assault ~~assault~~,  
16 battery, false arrest, false imprisonment, malicious prosecution, abuse  
17 of process, libel, slander, misrepresentation, deceit, or interference  
18 with contract rights. This ~~, except that this~~ subdivision does not apply  
19 to a claim: ~~under~~

20 (a) Under the Healthy Pregnancies for Incarcerated Women Act; or

21 (b) When the harm caused by child abuse or sexual assault of a child  
22 is a proximate result of the failure of a school district as defined in  
23 section 79-101 or an employee of the school district to exercise  
24 reasonable care to either:

25 (i) Control a person over whom the school district has taken charge;  
26 or

27 (ii) Protect a person who is in the school district's care, custody,  
28 or control from harm caused by a non-employee actor;

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

31 (9) Any claim arising out of the malfunction, destruction, or

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

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

24 (12) Any claim arising out of the alleged insufficiency or want of  
25 repair of any highway as defined in such section, bridge, or other public  
26 thoroughfare. Insufficiency or want of repair shall be construed to refer  
27 to the general or overall condition and shall not refer to a spot or  
28 localized defect. A political subdivision shall be deemed to waive its  
29 immunity for a claim due to a spot or localized defect only if (a) the  
30 political subdivision has had actual or constructive notice of the defect  
31 within a reasonable time to allow repair prior to the incident giving

1 rise to the claim or (b) the claim arose during the time specified in a  
2 notice provided by the political subdivision pursuant to subsection (3)  
3 of section 39-1359 and the state or political subdivision had actual or  
4 constructive notice; or

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

20 (b) For purposes of this subdivision:

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

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

31 (iii) Gross negligence means the absence of even slight care in the

1 performance of a duty involving an unreasonable risk of harm; and

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

8 (c) This subdivision, and not subdivision (3) of this section, shall  
9 apply to any claim arising from the inspection or failure to make an  
10 inspection or negligent inspection of premises owned or leased by the  
11 political subdivision and used for recreational activities.

12 Sec. 2. Original section 13-910, Reissue Revised Statutes of  
13 Nebraska, is repealed.