

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT
LB628

Hearing Date: Monday March 23, 2009
Committee On: Business and Labor
Introducer: Business and Labor
One Liner: Provide for payment of claims against the state

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 7 Senators Carlson, Council, Lathrop, McGill, Schilz, Wallman, White
Nay:
Absent:
Present Not Voting:

Proponents: Molly Burton Laura Peterson Allen Beermann David Cookson	Representing: Introducer Department of Administrative Services Nebraska Press Association Nebraska Attorney General
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Opponents:	Representing:
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Neutral:	Representing:
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Summary of purpose and/or changes:

LB 628 is introduced by the Business and Labor Committee at the request of the Department of Administrative Services, Risk Management Division. This bill introduces the claims against the State that are required by statute to be reviewed by the Legislature.

Section 1 MISCELLANEOUS CLAIMS

1. Claim No. 2009-03297 filed by the Nebraska Press Advertising Service against the Secretary of State. This is a request for reimbursement for printing and publishing costs for constitutional amendments placed on the 2008 primary and general election ballots. The Secretary of State recommended the claim be approved.

General Fund Claim Amount: \$87,387.20

2. Claim No. 2009-03442 filed by Ogborn, Summerlin & Ogborn PC for attorney fees in representing a prisoner against the Department of Corrections in a federal 1983 action. There is a judgment from the U.S. District Court, District of Nebraska (El-Tabech v. Clarke) awarding attorney fees and costs. Post-judgment interest also applies.

General Fund Claim Amount: \$209,549.92

Section 2 TORT CLAIMS

1. Claim No. 04-127 filed by Ross Ostergard and P. Stephen Potter against the Department of Roads. This was a negligence claim against the State filed in Lancaster District Court. The court found the State negligent in how it posted stop signs at an intersection and by failing to place rumble bars prior to the intersection. The court found the plaintiff was also negligent and allocated his negligence at 40%. Accordingly, his award was reduced by 40% plus costs and interest.

Roads Operations Cash Fund Claim Amount: \$150,588.52

2. Claim Nos. 04-275, 04-297 and 04-298 filed by William F. Kirkwood, Robert C. Johnson, Mavis M. Johnson and Hickey & Evans, LLC against the Department of Roads. This was a negligence action against the State filed in Lancaster District Court. The court found the State negligent in how it posted stop signs. It found that the State did not comply with the Manual on Uniform Traffic Control Devices. The court awarded damages to Rober and Mavis Johnson and William Kirkwood. The award also includes costs and interest.

Roads Operations Cash Fund Claim Amount: \$3,567,345.14

3. Claim No. 2008-01916 filed by Steven Werner against the Department of Roads. Claimant's motorcycle was hit by a department of road's vehicle. DOR's vehicle turned left in front of claimant without using the turning lane.

State Insurance Fund Claim Amount: \$69,000

4. Claim No. 2007-01467 filed by Kayla Trebesch against the Game and Parks Commission. Claimant's car was hit by a Game and Parks' employee driving the department's car in South Dakota. This is a settlement agreement approved by the agency and the Board. The settlement was approved by the district court.

State Insurance Fund Claim Amount: \$156,157.32

5. Claim No. 2009-03181 filed by the State of South Dakota Employee Health Plan against the Game and Parks Commission. This claim is related to the previous claim, 2007-01467. Though its subrogation rights South Dakota filed this claim to recoup medical expenses it paid.

State Insurance Fund Claim Amount: \$57,606.73

Section 3 grants the Director of Administrative Services authority to issue warrants for payment of the claims enumerated in sections 1 and 2. Clarifies that payment cannot be made until the beneficiaries sign waivers releasing the State of any other claims.

Section 4 AGENCY WRITE-OFF REQUESTS

The Board has approved all of the following requests:

1. Request No. 2008-02408 is made by the Nebraska Supreme Court for \$213.28.
2. Request No. 2009-03129 is made by Clerk of the Legislature to write off \$61.64 for reproduction of legislative materials. Letters requesting payment were sent monthly to no avail.
3. Request No. 2009-03176 is made by the Department of Health and Human Services for its programs and facilities to write off \$260,275. The total includes unclaimed debts due to deaths, bankruptcies and statute of limitations.
4. Request No. 2009-03206 is made by the Military Department to write off \$2,456.79 in tuition reimbursements under the National Guard Tuition Assistance Program. Letters requesting payment were sent to no avail.
5. Request No. 2009-03218 is made by the Nebraska Workers' Compensation Court to write off \$22,796.08 for an

unrecoverable overpayment of worker's compensation second injury benefits from the Workers' Compensation Trust Fund. Apparently, pursuant to an award to Maureen Ellis from September 15, 1999, second injury benefits were to be paid from the fund for 300 weeks. However, payments were made after the 300 week deadline until the error was caught. Thus, Ms. Ellis was overpaid \$22,796.08. The Nebraska Workers' Compensation Act does not provide a right of reimbursement for overpayment of benefits.

6. Request No. 2009-03243 is made by the Department of Roads to write off \$12,249.31. The debts relate to damage to agency property. The department made efforts to collect on the debts.

7. Request No. 2009-03246 is made by the Nebraska Supreme Court for \$185.82.

8. Request No. 2009-03339 is made by the State Fire Marshal to write off \$4,470 for uncollectible debt for annual underground storage tank registration fees for the years 2000-2004. Attempts were made to collect the debts and the statute of limitations has run.

Explanation of amendments:

AM 1116 adds two approved claims: \$2,500.00 for tort claim number 2007-01616 against the Department of Roads to Joshua Vandenberg and Vince Powers and \$600,000.00 for tort claim number 2009-03528 against the Department of Health and Human Services to David Manes and Jefferson Downing.

Amends amounts owed by the State due to the additional two claims and changes the write-off amount for the Nebraska Supreme Court.

Steve Lathrop, Chairperson