

FILED APR 30 1976

SENATE FILE 1320

By COMMITTEE ON CITIES

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to changes in the tort liability of
2 governmental subdivisions.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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S-5751

1 Amend Senate File 1320 as follows:

2 1. Page 3, line 16, by striking the word "section"
3 and inserting in lieu thereof the word "sections".

4 2. Page 4, by inserting after line 7 the follow-
5 ing new section:

6 "NEW SECTION. LIMITATION ON AMOUNT OF JUDGMENTS,
7 AWARDS, AND SETTLEMENTS. A judgment, award, or settle-
8 ment against a municipality within the scope of this
9 chapter shall not exceed:

10 1. The sum of one hundred thousand dollars to
11 one claimant for all claims arising out of a single
12 accident or occurrence.

13 2. The sum of three hundred thousand dollars to
14 two or more claimants for all claims arising out of
15 a single accident or occurrence. However, in such
16 instance, a claimant shall not recover more than one
17 hundred thousand dollars."

S-5751 FILED
MAY 11, 1976

BY ELIZABETH SHAW

1 Section 1. Section six hundred thirteen A point one
2 (613A.1), subsection three (3), Code 1975, is amended to read
3 as follows:

4 3. "Tort" means every civil wrong which results in wrongful
5 death or injury to person or injury to property or injury
6 to personal or property rights and includes but is not
7 restricted to actions based upon negligence; error or omission;
8 nuisance; breach of duty, whether statutory or other duty;
9 or denial or impairment of any right under any constitutional
10 provision, statute, or rule of law.

11 Sec. 2. Section six hundred thirteen A point two (613A.2),
12 unnumbered paragraph two (2), Code 1975, is amended to read
13 as follows:

14 A tort shall be deemed to be within the scope of employment
15 or duties if the act or omission ~~reasonably-relates-to-the~~
16 ~~business-or-affairs-of-the-municipality-and-the-officer,~~
17 ~~employee,-or-agent-acted-in-good-faith-and-in-a-manner-a~~
18 ~~reasonable-person-would-have-believed-to-be-in-and-not-opposed~~
19 ~~to-the-best-interests-of-the-municipality~~ giving rise to the
20 cause of action is of the same general nature as the act or
21 omission authorized or is incidental to the act or omission
22 authorized.

23 Sec. 3. Section six hundred thirteen A point four (613A.4),
24 Code 1975, is amended to read as follows:

25 613A.4 CLAIMS EXEMPTED. The liability imposed by section
26 613A.2 shall have no application to any claim enumerated in
27 this section. As to any such claim, a municipality shall
28 be liable only to the extent liability may be imposed by the
29 express statute dealing with such claims and, in the absence
30 of such express statute, the municipality shall be immune
31 from liability.

32 1. Any claim by an employee of the municipality which
33 is covered by the Iowa workmen's compensation law.

34 2. Any claim in connection with the assessment or
35 collection of taxes.

1 3. Any claim based upon an act or omission of an officer
2 or employee, exercising due care, in the execution of a
3 ~~statute, ordinance, or officially adopted resolution, rule,~~
4 ~~or regulation of a governing body~~ state or federal statute
5 or rule, whether or not such statute or rule is held to be
6 unconstitutional after the time of the alleged act or omission.

7 4. Any claim based upon an act or omission of an officer
8 or employee exercising due care in the execution of a valid
9 ordinance, rule, or resolution of a governing body other than
10 the state or federal government.

11 5. Any claim against a municipality as to which the
12 municipality is immune from liability by the provisions of
13 any other statute or where the action based upon such claim
14 has been barred or abated by operation of statute or rule
15 of civil procedure.

16 ~~The remedy against the municipality provided by section~~
17 ~~613A.2 shall hereafter be exclusive of any other civil action~~
18 ~~or proceeding by reason of the same subject matter against~~
19 ~~the officer, employee or agent whose act or omission gave~~
20 ~~rise to the claim, or his estate.~~

21 6. Any claim by an employee of the municipality which
22 is covered by chapters four hundred ten (410) or four hundred
23 eleven (411) of the Code.

24 7. Any claim for punitive or exemplary damages whether
25 or not the municipality is sued directly or pursuant to the
26 provisions of section five (5) of this Act.

27 Sec. 4. Section six hundred thirteen A point eight
28 (613A.8), Code 1975, is amended to read as follows:

29 613A.8 OFFICERS AND EMPLOYEES DEFENDED. The governing
30 body shall defend any of its officers, employees, and agents,
31 whether elected or appointed ~~and, except in cases of~~
32 ~~malfeasance in office, willful and unauthorized injury to~~
33 ~~persons or property, or willful or wanton neglect of duty,~~
34 in any civil action arising under the provisions of section
35 six hundred thirteen A point two (613A.2) of the Code and,

1 except for punitive or exemplary damages, shall save harmless
2 and indemnify such officers, employees, and agents against
3 any tort claim or demand, whether groundless or otherwise,
4 arising out of an alleged act or omission occurring within
5 the scope of their employment or duties. Any independent
6 or autonomous board ~~or,~~ commission, or agency of a municipality
7 having authority to disburse funds for a particular municipal
8 function without approval of the governing body shall similarly
9 defend, and save harmless and indemnify its officers,
10 employees, and agents against such tort claims or demands.

11 ~~The duty to defend, save harmless, and indemnify shall~~
12 ~~apply whether or not the municipality is a party to the action~~
13 ~~and shall include but not be limited to cases arising under~~
14 ~~title 42 United States Code section 4983.~~

15 Sec. 5. Chapter six hundred thirteen A (613A), Code 1975,
16 is amended by adding the following new section:

17 NEW SECTION.

18 1. A municipality shall intervene and substitute itself
19 as a defendant in a suit brought originally against an officer,
20 employee, or agent of the municipality if the alleged act
21 or omission occurred within the scope of such person's
22 employment or duties with the municipality.

23 2. If the municipality does not intervene and substitute
24 itself as a defendant as provided in subsection one (1) of
25 this section, the officer, employee, or agent must implead
26 the municipality within sixty days after the filing of the
27 action to determine whether the alleged act or omission
28 occurred within the scope of such person's employment or
29 duties and whether the municipality is liable for such act
30 or omission. If the municipality is not so impleaded, the
31 officer, employee, or agent is forever barred from making
32 any claim against the municipality with respect to the subject
33 matter giving rise to the action.

34 3. If the municipality intervenes and substitutes itself
35 as a defendant as provided in subsection one (1) of this

1 section or is impleaded pursuant to subsection two (2) of
2 this section, the officer, employee, or agent of the
3 municipality shall be entitled to indemnity from the
4 municipality for attorney fees and court costs if it is
5 determined that the alleged act or omission occurred within
6 the scope of such person's employment or duties and the
7 municipality is liable for the alleged act or omission.

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EXPLANATION

9 This bill makes a number of changes in Chapter 613A of
10 the Code which deals with tort liability of governmental
11 subdivisions. The bill changes the test for determining
12 whether an act or omission is within the scope of employment
13 or duties of an officer, employee, or agent for the purpose
14 of determining liability of a municipality. It changes to
15 Section 613A.4 of the Code such as claims by an employee of
16 a municipality which are covered by Chapter 410 of the Code
17 dealing with disabled and retired firemen and policemen or
18 by Chapter 411 of the Code dealing with retirement systems
19 for policemen and firemen. Another exempt claim would be
20 a claim for punitive or exemplary damages. The bill provides
21 that the governing body shall defend any of its officers,
22 employees, and agents in any civil action arising under the
23 provisions of Section 613A.2 of the Code. The bill also adds
24 a new section to Chapter 613A providing when a municipality
25 shall intervene and substitute itself as a defendant in a
26 suit, providing that the employee must implead the municipality
27 within sixty days after the filing of an action against him
28 or her or be forever barred from making a claim against the
29 municipality with respect to the subject matter giving rise
30 to the action, and providing when an employee will be
31 indemnified by the municipality for attorney fees and court
32 costs.

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