

HOUSE FILE 2419

By COMMITTEE ON CITIES

(Formerly Study Bill 392)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

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

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

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HOUSE FILE 2419

H-6325

1 Amend House File 2419 as follows:

2 1. Page 3, by inserting after line 34 the follow-
3 ing:

4 "Sec. ____ Chapter six hundred thirteen A (613A),
5 Code 1977, is amended by adding the following new
6 section:

7 NEW SECTION. DAMAGES RECOVERABLE. Recovery by
8 any person upon a claim for which a municipality is
9 liable under this chapter shall be limited to the
10 following losses, to the extent proved, and a judgment
11 is void to the extent it contains an award for any
12 other type of loss:

13 1. Damage to property or property rights.

14 2. Losses of earnings; and loss of future earning
15 capacity.

16 3. Expenses incurred or to be incurred in the
17 future for medical, surgical, X-ray, chiropractic,
18 dental, optical, prescription medicines and drugs,
19 prosthetic devices, ambulance, hospital, extended
20 care, professional nursing, medical rehabilitation
21 and vocational rehabilitation.

22 4. Any other reasonable expenses incurred by the
23 claimant as proximate consequences of the act or
24 omission upon which the judgment is based."

25 2. By renumbering sections and correcting internal
26 references as necessary.

H-6325 FILED
APRIL 25, 1978

BY SPEAR of Lee

1 Section 1. Section three hundred thirty-two point three
2 (332.3), subsection twenty (20), Code 1977, is amended to
3 read as follows:

4 20. To purchase and pay the premiums on liability and
5 property damage insurance covering and insuring the county,
6 county officials, and employees while in the performance of
7 their duties ~~and-operating-an-automobile,-truck,-road-grader,-~~
8 ~~machinery,-or-other-vehicles-owned-by-the-county,-which~~
9 ~~insurance-shall-insure,-cover-and-protect-against-individual~~
10 ~~personal-liability-the-county-employees-or-employee-may-incur.~~
11 ~~The-amount-of-insurance-a-county-may-purchase-shall-not-exceed~~
12 ~~ten-thousand-dollars-for-property-damage-or-fifty-thousand~~
13 ~~dollars-for-personal-injury-or-death-of-one-person-or-one~~
14 ~~hundred-thousand-dollars-for-personal-injury-or-death-of-more~~
15 ~~than-one-person-arising-out-of-a-single-accident.~~

16 Sec. 2. Section six hundred thirteen A point two (613A.2),
17 Code 1977, is amended by striking unnumbered paragraph two
18 (2).

19 Sec. 3. Section six hundred thirteen A point four (613A.4),
20 subsection three (3), Code 1977, is amended to read as follows:

21 3. Any claim based upon an act or omission of an officer
22 or employee, exercising due care, in the execution of a
23 statute, ordinance, or officially adopted resolution, rule,
24 or regulation of a governing body whether or not such statute,
25 ordinance, or officially adopted resolution, rule or regulation
26 be valid, or based upon the exercise or performance or the
27 failure to exercise or perform a discretionary function or
28 duty on the part of an officer, agent, or employee of the
29 municipality.

30 Sec. 4. Section six hundred thirteen A point seven
31 (613A.7), Code 1977, is amended by adding the following new
32 unnumbered paragraphs:

33 NEW UNNUMBERED PARAGRAPH. Any person issuing to a
34 municipality a policy of insurance insuring against all or
35 any part of the liability referred to in this section shall

1 be deemed as a condition of exercising the privilege of
2 transacting that business in this state to have agreed that
3 the policy shall not be canceled, and that the issuer shall
4 not refuse to renew the policy on any grounds other than
5 nonpayment of premium, unless the issuer gives written notice
6 of the intended cancellation or nonrenewal not less than
7 ninety days prior to the date upon which the policy is to
8 be canceled or the date upon which the policy shall expire,
9 notwithstanding any provision in the policy to the contrary.

10 NEW UNNUMBERED PARAGRAPH. Any person issuing to a
11 municipality a policy of insurance insuring against all or
12 any part of the liability referred to in this section shall
13 be deemed as a condition of exercising the privilege of
14 transacting that business in this state to have agreed that
15 the policy shall be renewable at the same or less cost to
16 the municipality unless the issuer gives written notice to
17 the municipality not less than ninety days prior to the annual
18 budget certification date of the municipality as provided
19 by law, of the increases in premium which will become effective
20 upon a renewal of the policy, notwithstanding any provision
21 of the policy to the contrary.

22 Sec. 5. The provisions of section four (4) of this Act
23 shall apply only to those policies of insurance which are
24 issued or renewed after the effective date of this Act.

25 Sec. 6. Section six hundred thirteen A point eight
26 (613A.8), Code 1977, is amended to read as follows:

27 613A.8 OFFICERS AND EMPLOYEES DEFENDED. The governing
28 body shall defend any of its officers, employees and agents,
29 whether elected or appointed and, ~~except in cases of~~
30 ~~malfeasance in office, willful and unauthorized injury to~~
31 ~~persons or property, or willful or wanton neglect of duty,~~
32 shall save harmless and indemnify such officers, employees
33 and agents against any tort claim or demand, whether groundless
34 or otherwise, arising out of an alleged act or omission
35 occurring within the scope of their employment or duties.

1 However, the duty to save harmless and indemnify shall not
2 apply to awards for punitive or multiple damages, and shall
3 not apply in the event the officer, agent or employee fails
4 to cooperate in the defense against the claim or demand. Any
5 independent or autonomous board or commission of a munici-
6 pality having authority to disburse funds for a particular
7 municipal function without approval of the governing body
8 shall similarly defend, save harmless and indemnify its
9 officers, employees and agents against such tort claims or
10 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 1983.

15 Sec. 7. Chapter six hundred thirteen A (613A), Code 1977,
16 is amended by adding the following new section:

17 NEW SECTION. CONTRIBUTION AND INDEMNITY. Section three
18 hundred twenty-one point four hundred ninety-four (321.494)
19 of the Code shall not bar any action or claim for contribution
20 or indemnity by a municipality against the owner or operator
21 of a motor vehicle.

22 Sec. 8. Chapter six hundred thirteen A (613A), Code 1977,
23 is amended by adding the following new section:

24 NEW SECTION. IMMUNITY OF OFFICERS AND EMPLOYEES. All
25 officers and employees of a municipality shall be immune from
26 any claim based upon an act or omission while exercising due
27 care in the execution of a statute, ordinance, or officially
28 adopted resolution, rule or regulation of a governing body,
29 whether or not the statute, ordinance, or officially adopted
30 resolution, rule or regulation be valid, or based upon the
31 exercise or performance or the failure to exercise or perform
32 a discretionary function or duty. An officer or employee
33 of a municipality shall not be liable for punitive damages
34 unless actual malice is proved.

35 Sec. 9. Sections three hundred twenty-one point three

1 hundred forty-two (321.342) and four hundred twenty point
2 forty-five (420.45), Code 1977, are repealed.

3 EXPLANATION

4 This bill amends Iowa law respecting tort liability of
5 local governmental subdivisions as follows:

6 Section 1 deletes from chapter 332 of the Code, relating
7 to counties, language which is inconsistent with language
8 contained in chapter 613A of the Code. The language being
9 removed limits the amount of liability insurance which a
10 county may purchase. Section 613A.7 authorizes a county to
11 insure against all or any part of its tort liability.

12 Section 2 strikes from section 613A.2 a definition of
13 "scope of employment" which differs from the usual "scope
14 of employment" standards which apply in ordinary civil actions.

15 Section 3 adds language which precludes liability for
16 decisions within the discretion of the municipality. The
17 language is the same as the exemption in the state tort claims
18 Act (see section 25A.14(1) of the Code).

19 Sections 4 and 5 amend Chapter 613A of the Code to provide
20 that any insurer who after the effective date of the Act
21 issues or renews a policy insuring a "municipality" against
22 tort claims shall:

23 1. Give written notice of any intention to cancel or not
24 renew at least ninety days prior to the cancellation or
25 expiration date; and

26 2. Give written notice at least ninety days prior to the
27 municipality's budget certification date of any increase in
28 premium which will be required to renew the policy.

29 Section 6 rewrites the provision imposing the duty on a
30 municipality to defend and indemnify its officers and
31 employees. Existing language, in conjunction with the "scope
32 of employment" language being struck by section two (2) of
33 the bill, is stated to have caused misunderstandings between
34 municipalities and employees about when the duty to defend
35 exists. The new language makes it clear that the duty to

1 defend exists in every case. The additional duty to save
2 harmless and indemnify exists in every case unless the employee
3 fails to cooperate in the defense, but does not apply to
4 awards for punitive or multiple damages.

5 Section 7 amends Chapter 613A to provide that the automobile
6 guest statute shall not bar a claim by a municipality for
7 contribution from or indemnity by a third person whose acts
8 or omissions are a proximate cause of losses for which a tort
9 claim is filed against the municipality. Present judicial
10 interpretation of the guest statute prevents a municipality
11 from seeking contribution or indemnity from a driver when
12 the negligence of a municipal employee and that driver combine
13 to cause injury to a passenger in the driver's vehicle. This
14 section would permit contribution or indemnity, but otherwise
15 would not affect the guest statute.

16 Section 8 adds a new section providing that municipal
17 officers and employees are not personally liable when exer-
18 cising due care in the execution of laws or when exercising
19 discretion. This exception is parallel to the language con-
20 tained in section 3 of the bill. The purpose of the excep-
21 tion to liability of the municipality would be defeated if
22 the employee could be held liable when the municipality cannot.
23 The new section also provides that an officer or employee
24 cannot be held liable for punitive damages unless malice is
25 proved.

26 Section 9 repeals Code section 321.342. That section
27 specifically authorizes the department of transportation and
28 local authorities to designate certain highway railroad
29 crossings as "particularly dangerous" and to erect stop signs.
30 As interpreted by the Iowa supreme court, chapter 321 has
31 been held to impose a duty on municipalities to intall stop
32 signs, and the section being repealed is misleading in that
33 it suggests there is no duty.

34 Section 9 also repeals a statute of limitations for
35 municipal tort claims which applies only to cities under

1 special charter. Chapter 613A, relating to municipal tort
2 claims, does not exempt those cities or otherwise treat them
3 separately, but the notice requirements under chapter 613A
4 are different from those in section 420.45. The purpose of
5 the limitation is the same, and the time limits involved are
6 not significantly different. This change would make chapter
7 613A applicable to all cities.

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HOUSE FILE 2419

H-6424

- 1 Amend House File 2419 as follows:
- 2 1. Page 3, line 34 by striking the word "actual"
- 3 and inserting in lieu thereof the word "legal"

H-6424 FILED
MAY 1, 1978

BY JESSE of Polk