

Reprinted 4/4/81

FILED MAR 25 1981

SENATE FILE 474

BY COMMITTEE ON JUDICIARY

(FORMERLY SSB 178)

Approved 3/25/81 (S 963)

Passed Senate, Date 4-14-81 (p. 1267) Passed House, Date 4-27-81 (P. 1454)

Vote: Ayes 36 Nays 11 Vote: Ayes 74 Nays 24

Approved March 2, 1982

A BILL FOR

1 An Act relating to the tort liability of governmental sub-
2 divisions.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 Section 1. Chapter 613A, Code 1981, is amended by adding
2 the following new section:

3 NEW SECTION. OFFICERS AND EMPLOYEES. All officers and
4 employees of municipalities are not personally liable for
5 any claim which is exempted under section 613A.4, except a
6 claim for punitive damages. An officer or employee of a
7 municipality is not liable for punitive damages as a result
8 of acts in the performance of a law enforcement or emergency
9 duty, unless actual malice is proven.

10 Sec. 2. Section 613A.2, unnumbered paragraphs 1 and 2,
11 Code 1981, are amended as follows:

12 Except as otherwise provided in this chapter, every
13 municipality is subject to liability for its torts and those
14 of its officers, and employees, ~~and-agents~~ acting within the
15 scope of their employment or duties, whether arising out of
16 a governmental or proprietary function.

17 ~~A-tort-shall-be-deemed-to-be-within-the-scope-of-employment~~
18 ~~or-duties-if-the-act-or-omission-reasonably-relates-to-the~~
19 ~~business-or-affairs-of-the-municipality-and-the-officer,~~
20 ~~employee,-or-agent-acted-in-good-faith-and-in-a-manner-a~~
21 ~~reasonable-person-would-have-believed-to-be-in-and-not-opposed~~
22 ~~to-the-best-interests-of-the-municipality.~~

23 Sec. 3. Section 613A.4, subsection 3, Code 1981, is amended
24 to read as follows:

25 3. Any claim based upon an act or omission of an officer
26 or employee of the municipality, exercising due care, in the
27 execution of a statute, ordinance, ~~or-officially-adopted~~
28 ~~resolution,-rule,-or-regulation-of-a-governing-body~~ whether
29 the statute, ordinance or regulation is valid, or based upon
30 the exercise or performance or the failure to exercise or
31 perform a discretionary function or duty on the part of the
32 municipality or an officer or employee of the municipality.

33 Sec. 4. Section 613A.4, Code 1981, is amended by adding
34 the following new subsections:

35 NEW SUBSECTION. 5. Any claim for punitive damages.

1 NEW SUBSECTION. 6. Any claim for damages caused by the
2 municipality's failure to make an inspection or by reason
3 of making an inadequate or negligent inspection of any property
4 not owned by the municipality.

5 NEW SUBSECTION. 7. Any claim based upon an act of the
6 municipality or an officer or employee of the municipality
7 in accordance with a generally accepted standard of care at
8 the time of the act.

9 Sec. 5. Section 613A.8, Code 1981, is amended to read
10 as follows:

11 613A.8 OFFICERS AND EMPLOYEES DEFENDED. The governing
12 body shall defend any of its officers, and employees and
13 agents, whether elected or appointed and, ~~except in cases~~
14 ~~of malfeasance in office, willful and unauthorized injury~~
15 ~~to persons or property, or willful or wanton neglect of duty,~~
16 shall save harmless and indemnify such officers, and employees
17 and agents against any tort claim or demand, whether groundless
18 or otherwise, arising out of an alleged act or omission
19 occurring within the scope of their employment or duties.
20 However, the duty to save harmless and indemnify shall not
21 apply to awards for punitive damages, and shall not apply
22 in the event the officer or employee fails to cooperate in
23 the defense against the claim or demand; and the duty to save
24 harmless and indemnify shall not apply and the municipality
25 shall be entitled to restitution by an officer or employee
26 if, in an action commenced by the municipality against the
27 officer or employee, it is determined that the conduct of
28 the officer or employee upon which the tort claim or demand
29 was based constituted a willful and wanton act or omission.

30 Any independent or autonomous board or commission of a
31 municipality having authority to disburse funds for a
32 particular municipal function without approval of the governing
33 body shall similarly defend, save harmless and indemnify its
34 officers, and employees and agents against such tort claims
35 or demands.

1 The ~~duty~~ duties to defend, and to save harmless, and
2 indemnify shall apply whether or not the municipality is a
3 party to the action and shall include but not be limited to
4 cases arising under title 42 United States Code section 1983.

5 EXPLANATION

6 This bill amends the Iowa law concerning tort liability
7 of local government subdivisions.

8 Section 1 of the bill adds a new section to chapter 613A,
9 which provides that municipal officers and employees are not
10 personally liable for tort claims exempted by section 613A.4
11 from the liability under the chapter. However, the officers
12 and employees would still be liable for claims of punitive
13 damages. The new section also provides that an officer or
14 employee cannot be held liable for punitive damages unless
15 actual malice is proved.

16 Section 2 of the bill strikes from section 613A.2 a
17 definition of "scope of employment".

18 Section 3 of the bill adds language which precludes
19 liability for decisions made within the discretion of the
20 municipality. The language is similar to the exemption in
21 the state tort claims act, Iowa Code (section 25A.14,
22 subsection 1).

23 Section 4 of the bill adds to the municipalities' exemptions
24 from liability under chapter 613A. Included is the exemption
25 similar to section 25A.4 for state tort claims, from liability
26 for punitive damages. The section adds an exemption from
27 liability under the chapter to clarify that there is no
28 liability for inspections of property which is not owned by
29 the municipality. Claims against municipalities when they
30 act in accordance with a generally accepted standard of care
31 at the time they act are also exempted.

32 Section 5 of the bill amends 613A.8 by imposing the duty
33 upon the municipality to defend and indemnify its officers.
34 However, there is no duty to indemnify if the officer or
35 employee fails to cooperate in the defense, and there is no

1 indemnity for awards of punitive damages. Likewise, there
2 is no indemnity for willful and wanton acts or omissions and
3 the municipality is entitled to restitution from the officer
4 or employee for such conduct.

5 Throughout the bill the word "agent" is deleted from the
6 amended Code sections.

7 The bill would take effect July 1 following its enactment.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

SENATE FILE 474

S-3498

- 1 Amend Senate File 474 as follows:
2 1. Page 2, line 7, by striking the word "care"
3 and inserting in lieu thereof the word "design".

S-3498 FILED & ADOPTED (p. 1267) BY JOHN S. MURRAY
APRIL 14, 1981 LUCAS DeKOSTER

SENATE FILE 474

S-3491

- 1 Amend Senate File 474 as follows:
2 1. Page 2, line 1, by striking the word "the"
3 and inserting in lieu thereof the word "a".
4 2. Page 2, by striking lines 2 through 4 and
5 inserting in lieu thereof the following:
6 "municipality's failure to discover a latent defect
7 in the course of an inspection."

S-3491 FILED
APRIL 14, 1981
ADOPTED (p. 1266)

BY DICK RAMSEY

SENATE 3
APRIL 7, 1981

SENATE FILE 474

S-3383

1 Amend Senate File 474 as follows:
2 1. Page 2, by inserting after line 8 the following:
3 "Sec. _____. Section 613A.7, Code 1981, is amended
4 to read as follows:
5 613A.7 INSURANCE. The governing body of any
6 municipality may purchase a policy of liability
7 insurance ~~insuring-against~~, or may self insure, or
8 may enter into agreements with other municipalities
9 under chapter 520 with respect to all or any part
10 of liability which might be incurred by such the
11 municipality or its officers, employees and agents
12 under the provisions of section 613A.2 and section
13 613A.8 and may similarly purchase insurance covering,
14 or with respect to torts specified in section 613A.4.
15 The premium costs and other costs of such these
16 insurance policies or other agreements may be paid
17 out of the general fund or any available funds or
18 may be levied in excess of any tax limitation imposed
19 by statute. Any independent or autonomous board or
20 commission in the municipality having authority to
21 disburse funds for a particular municipal function
22 without approval of the governing body may similarly
23 procure liability insurance has, within the field
24 of its operation, the same authority as a municipality
25 under this section. The procurement of such insurance
26 against torts specified in section 613A.4 constitutes
27 a waiver of the defense of governmental immunity as
28 to those exceptions listed in section 613A.4 to the
29 extent stated in such policy but shall have no further
30 effect on the liability of the municipality beyond
31 the scope of this chapter. The existence of any
32 insurance which covers in whole or in part any judgment
33 or award which may be rendered in favor of the
34 plaintiff, or lack of any such insurance, shall not
35 be material in the trial of any action brought against
36 the governing body of any municipality, or their
37 officers, employees or agents and any reference to
38 such insurance, or lack of same, shall be grounds
39 for a mistrial."

S-3383 FILED BY DICK RAMSEY
APRIL 6, 1981

Placed out of order 4/14/81 (p. 1267)

SENATE FILE 474

S-3384

1 Amend Senate File 474 as follows:
2 1. Page 2, by striking lines 1 through 4.
3 2. By renumbering the new subsections to conform
4 to this amendment.

S-3384 FILED BY DICK RAMSEY
APRIL 6, 1981

Placed out of order 4/14/81 (p. 1266)

SENATE FILE 474

S-3272

- 1 Amend Senate File 474 as follows:
- 2 1. Page 1, by inserting before line 1 the
- 3 following:
- 4 "Section ____ Chapter 25A, Code 1981, is amended
- 5 by adding the following new section:
- 6 NEW SECTION. For claims which arise on or after
- 7 the effective date of this Act, an award on a claim
- 8 under this chapter or a court judgment or settlement
- 9 in a suit under this chapter shall not exceed:
- 10 1. One hundred thousand dollars for an injury to
- 11 one person in a single accident or occurrence.
- 12 2. Three hundred thousand dollars for an injury
- 13 to two or more persons in a single accident or
- 14 occurrence, except that one person shall not recover
- 15 in excess of one hundred thousand dollars."
- 16 2. Page 1, by inserting after line 9 the following:
- 17 "Sec. ____ Chapter 613A, Code 1981, is amended by
- 18 adding the following new section:
- 19 NEW SECTION. For claims which arise on or after the
- 20 effective date of this Act, an award on a claim under
- 21 this chapter or a court judgment or settlement in a
- 22 suit under this chapter shall not exceed:
- 23 1. One hundred thousand dollars for an injury to one
- 24 person in a single accident or occurrence.
- 25 2. Three hundred thousand dollars for an injury to
- 26 two or more persons in a single accident or occurrence,
- 27 except that one person shall not recover in excess of
- 28 one hundred thousand dollars."

S-3272 FILED

BY JOHN W. JENSEN

MARCH 31, 1981

W/R 4/6/81 (p. 1111)

SENATE FILE 474

S-3330

- 1 Amend Senate File 474 as follows:
- 2 1. Page 1, line 6, by striking the words "An
- 3 officer or employee of a".
- 4 2. Page 1, by striking lines 7 through 9.

S-3330 FILED

BY C. JOSEPH COLEMAN

APRIL 1, 1981

Loss 4/6/81 (p. 1112)

SENATE FILE 474

S-3331

- 1 Amend Senate File 474 as follows:
- 2 1. Page 2, lines 2 and 3, by striking the
- 3 words "or by reason of making an inadequate or
- 4 negligent inspection".

S-3331 FILED

BY EDGAR H. HOLDEN

APRIL 1, 1981

Placed out of order 4/14/81 (p. 1266)

SENATE FILE 474

S-3336

- 1 Amend Senate File 474 as follows:
- 2 1. Page 1, line 6, by inserting after the word
- 3 "officer" the following: ", agent,".

S-3336 FILED

BY BOB RUSH

APRIL 2, 1981

W/ 4/14/81 (p. 1267)

SENATE FILE 474

S-3337

- 1 Amend Senate File 474 as follows:
- 2 1. Page 1, by inserting after line 9 the following:
- 3 "Sec. Chapter 613A, Code 1981, is amended
- 4 by adding the following new section:
- 5 NEW SECTION. DEFAULT JUDGMENTS. A default judgment
- 6 shall not be taken against an employee, officer, or
- 7 agent of a municipality unless the municipality is
- 8 a party to the action and the time for special
- 9 appearance, motion or answer by the municipality under
- 10 rule 53 of the rules of civil procedure has expired."
- 11 2. Page 2, by striking lines 9 through 35.
- 12 3. Page 3, by striking lines 1 through 4.

S-3337 FILED

BY BOB RUSH

APRIL 2, 1981

A - Adopted, B. Lost 4/6/81 (p. 1112)

SENATE FILE 474

S-3338

- 1 Amend Senate File 474 as follows:
- 2 1. Page 1, by striking lines 10 through 22.
- 3 2. By renumbering to conform to this amendment.

S-3338 FILED

BY BOB RUSH

APRIL 2, 1981

Lost 4/6/81 (p. 1112)

SENATE FILE 474

S-3353

- 1 Amend Senate File 474 as follows:
- 2 1. Page 1, by striking line 35.

S-3353 FILED

BY A. R. KUDART

APRIL 2, 1981

Lost 4/14/81 (p. 1259)

See County Code 4/14/81
Commissio 3699 & Do Pass 4/16 (p. 1250)

SENATE FILE

474

BY COMMITTEE ON JUDICIARY

(AS AMENDED AND PASSED BY THE SENATE APRIL 14, 1981)

Passed Senate, Date ^{as further amended} 1-20-82 (p. 136) Passed House, Date ^{as amended} 4-27-81 (p. 1454)

Vote: Ayes 45 Nays 4 Vote: Ayes 74 Nays 24

Approved March 2, 1982

Motion to reconsider (p. 1455) (p. 1487)

Lost 5/22/81

Repassed House as further amended by 5015 2-16-82 (p. 430)

A BILL FOR

1 An Act relating to the tort liability of governmental sub-
2 divisions.

87-8

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

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

_____ = New Language
by the Senate

1 Section 1. Chapter 613A, Code 1981, is amended by adding
2 the following new section:

3 NEW SECTION. OFFICERS AND EMPLOYEES. All officers and
4 employees of municipalities are not personally liable for
5 any claim which is exempted under section 613A.4, except a
6 claim for punitive damages. An officer or employee of a
7 municipality is not liable for punitive damages as a result
8 of acts in the performance of a law enforcement or emergency
9 duty, unless actual malice is proven.

10 Sec. 2. Chapter 613A, Code 1981, is amended by adding
11 the following new section:

12 NEW SECTION. DEFAULT JUDGMENTS. A default judgment shall
13 not be taken against an employee, officer, or agent of a
14 municipality unless the municipality is a party to the action
15 and the time for special appearance, motion or answer by the
16 municipality under rule 53 of the rules of civil procedure
17 has expired.

18 Sec. 3. Section 613A.2, unnumbered paragraphs 1 and 2,
19 Code 1981, are amended as follows:

20 Except as otherwise provided in this chapter, every
21 municipality is subject to liability for its torts and those
22 of its officers, and employees, and agents acting within the
23 scope of their employment or duties, whether arising out of
24 a governmental or proprietary function.

25 ~~A tort shall be deemed to be within the scope of employment~~
26 ~~or duties if the act or omission reasonably relates to the~~
27 ~~business or affairs of the municipality and the officer,~~
28 ~~employee, or agent acted in good faith and in a manner a~~
29 ~~reasonable person would have believed to be in and not opposed~~
30 ~~to the best interests of the municipality.~~

31 Sec. 4. Section 613A.4, subsection 3, Code 1981, is amended
32 to read as follows:

33 3. Any claim based upon an act or omission of an officer
34 or employee of the municipality, exercising due care, in the
35 execution of a statute, ordinance, ~~or officially adopted~~

1 ~~resolution, rule, or regulation of a governing body~~ whether
2 the statute, ordinance or regulation is valid, or based upon
3 the exercise or performance or the failure to exercise or
4 perform a discretionary function or duty on the part of the
5 municipality or an officer or employee of the municipality.

6 Sec. 5. Section 613A.4, Code 1981, is amended by adding
7 the following new subsections:

8 NEW SUBSECTION. 5. Any claim for punitive damages.

9 NEW SUBSECTION. 6. Any claim for damages caused by a
10 municipality's failure to discover a latent defect in the
11 course of an inspection.

12 NEW SUBSECTION. 7. Any claim based upon an act of the
13 municipality or an officer or employee of the municipality
14 in accordance with a generally accepted standard of design
15 at the time of the act.

16 Sec. 6. Section 613A.8, Code 1981, is amended to read
17 as follows:

18 613A.8 OFFICERS AND EMPLOYEES DEFENDED. The governing
19 body shall defend any of its officers, and employees and
20 agents, whether elected or appointed and, ~~except in cases~~
21 ~~of malfeasance in office, willful and unauthorized injury~~
22 ~~to persons or property, or willful or wanton neglect of duty,~~
23 shall save harmless and indemnify such officers, and employees
24 and agents against any tort claim or demand, whether groundless
25 or otherwise, arising out of an alleged act or omission
26 occurring within the scope of their employment or duties.

27 However, the duty to save harmless and indemnify shall not
28 apply to awards for punitive damages, and shall not apply
29 in the event the officer or employee fails to cooperate in
30 the defense against the claim or demand; and the duty to save
31 harmless and indemnify shall not apply and the municipality
32 shall be entitled to restitution by an officer or employee
33 if, in an action commenced by the municipality against the
34 officer or employee, it is determined that the conduct of
35 the officer or employee upon which the tort claim or demand

1 was based constituted a willful and wanton act or ommission.
2 Any independent or autonomous board or commission of a
3 municipality having authority to disburse funds for a
4 particular municipal function without approval of the governing
5 body shall similarly defend, save harmless and indemnify its
6 officers, and employees ~~and-agents~~ against such tort claims
7 or demands.

8 The ~~duty~~ duties to defend, and to save harmless, and
9 indemnify shall apply whether or not the municipality is a
10 party to the action and shall include but not be limited to
11 cases arising under title 42 United States Code section 1983.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

SENATE FILE 474

H-3699

1 Amend Senate File 474, as amended, passed and
2 reprinted by the Senate, as follows:
3 1. Page 2, by striking lines 9, 10, and 11 and
4 inserting in lieu thereof the following:
5 "NEW SUBSECTION. 6. Any claim for damages caused
6 by the municipality's failure to make an inspection
7 or by reason of making an inadequate or negligent
8 inspection of any property not owned by the
9 municipality."

H-3699 FILED BY COMMITTEE ON COUNTY GOVERNMENT
APRIL 16, 1981 DANKER, Chair

Adopted 4/27/81 (p. 1448)

SENATE FILE 474

H-3730

1 Amend Senate File 474, as amended, passed and
2 reprinted by the Senate, as follows:
3 1. Page 2, by striking line 8.
4 2. By renumbering as necessary to conform to
5 this amendment.

H-3730 FILED APRIL 21, 1981 BY SHIMANEK of Jones

Adopt 4/27/81 (p. 1452)

SENATE FILE 474

H-3741

1 Amend Senate File 474 as amended, passed, and
2 reprinted by the Senate as follows:
3 1. Page 2, by striking line 5 and inserting in
4 lieu thereof the following: "municipality or an
5 officer or employee of the municipality, unless such
6 performance or failure to perform was done
7 negligently."

H-3741 FILED APRIL 21, 1981 BY KREWSON of Polk
Adopt 4/27/81 (p. 1452) SHIMANEK of Jones
AVENSON of Fayette

SENATE FILE 474

H-3753

- 1 Amend Senate File 474 as amended, passed, and
- 2 reprinted by the Senate as follows:
- 3 1. Page 1, line 6, by inserting after the word
- 4 "damages" the words ", and actions permitted under
- 5 section 85.20" .

H-3753 FILED APRIL 22, 1981 BY RITSEMA of Sioux

Adopted 4/21/81 (p 1449)

SENATE FILE 474

H-3754

- 1 Amend Senate File 474 as amended, passed, and
- 2 reprinted by the Senate as follows:
- 3 1. Page 2, by striking lines 28 through 30, and
- 4 inserting in lieu thereof the following: "apply to
- 5 awards for punitive damages. The duty to save".
- 6 2. Page 3, by inserting after line 11 the following:
- 7 "In the event the officer or employee fails to
- 8 cooperate in the defense against the claim or demand,
- 9 the municipality shall have a right of indemnification
- 10 against that officer or employee."

H-3754 FILED APRIL 22, 1981 BY RITSEMA of Sioux

Adopted 4/27/81 (p 1454)

SENATE FILE 474

H-3764

- 1 Amend Senate File 474, as amended, passed and
- 2 reprinted by the Senate as follows:
- 3 1. Page 2, by striking lines 12 through 15.

H-3764 FILED APRIL 22, 1981 BY HANSON of Delaware

Adopted 4/27/81 (p 1453)

SENATE FILE 474

H-3814

- 1 Amend amendment H-3800 to Senate File 474 as
- 2 amended, passed and reprinted by the Senate, as follows:
- 3 1. Page 1, by inserting after line 4, the
- 4 following:
- 5 "2. Page 1, line 9, by inserting after the word
- 6 "malice" the words "or recklessness"."

H-3814 FILED APRIL 24, 1981 BY CONLON of Muscatine
4/18 4/27/81 (p. 1449) POFFENBERGER of Dallas

SENATE FILE 474

H-3813

- 1 Amend amendment H-3800 to Senate File 474 as
- 2 amended, passed and reprinted by the Senate as
- 3 follows:
- 4 1. Page 1, by striking lines 3 and 4 and
- 5 inserting in lieu thereof the following:
- 6 "1. Page 1, line 9, by striking the word "actual".
- 7 2. Page 1, line 9, by inserting after the word
- 8 "malice" the words "or recklessness"."

H-3813 FILED APRIL 24, 1981 BY CONLON of Muscatine
4/18 4/27/81 (p. 1449) POFFENBERGER of Dallas

SENATE FILE 474

H-3811

- 1 Amend amendment H-3699 to Senate File 474, as
- 2 amended, passed and reprinted by the Senate, as follows:
- 3 1. Page 1, by striking lines 3 through 9 and
- 4 inserting in lieu thereof the following:
- 5 "1. Page 1, by striking lines 1 through page 2,
- 6 line 5.
- 7 2. Page 2, by striking lines 16 through page 3,
- 8 line 11.
- 9 3. By renumbering as necessary to conform to this
- 10 amendment."

H-3811 FILED APRIL 24, 1981 BY SHIMANEK of Jones
Revised out of order 4/27/81 (p. 1445) POFFENBERGER of Dallas

SENATE FILE 474

H-3816

- 1 Amend Senate File 474 as amended, passed and
- 2 reprinted by the Senate as follows:
- 3 1. Page 1, line 9, by inserting after the word
- 4 "malice" the words "or recklessness".

H-3816 FILED APRIL 24, 1981 BY CONLON of Muscatine
Adopted 4/27/81 (p. 1450)

SENATE FILE 474

H-3769

- 1 Amend Senate File 474 as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 1, by striking lines 3 and 4 and inserting
4 in lieu thereof the following:
5 "NEW SECTION. OFFICERS, EMPLOYEES AND AGENTS.
6 All officers, employees, and agents of municipalities
7 are not personally liable for".
8 2. Page 1, by striking line 6 and inserting in
9 lieu thereof the following: "claim for punitive
10 damages. An officer, employee, or agent of a".
11 3. Page 1, by striking line 22 and inserting in
12 lieu thereof the following: "of its officers,
13 employees, and agents acting within the".
14 4. Page 2, by striking lines 19 and 20 and
15 inserting in lieu thereof the following: "body shall
16 defend any of its officers, employees, and agents,
17 whether elected or appointed and, ~~except in cases~~".
18 5. Page 2, by striking lines 23 and 24 and
19 inserting in lieu thereof the following: "shall save
20 harmless and indemnify such officers, employees, and
21 agents against any tort claim or demand, whether
22 groundless".
23 6. Page 2, by striking line 29 and inserting in
24 lieu thereof the following: "in the event the officer,
25 employee, or agent fails to cooperate in".
26 7. Page 2, by striking line 32 and inserting in
27 lieu thereof the following: "shall be entitled to
28 restitution by an officer, employee, or agent".
29 8. Page 2, by striking lines 34 and 35 and
30 inserting in lieu thereof the following: "officer,
31 employee, or agent, it is determined that the conduct
32 of the officer, employee, or agent upon which the
33 tort claim or demand".
34 9. Page 3, by striking line 6 and inserting in
35 lieu thereof the following: "officers, employees,
36 and agents against such tort claims".

H-3769 FILED APRIL 22, 1981 BY JAY of Appanoose

Let 4/27/81 (p. 1449)

SENATE FILE 474

H-3800

- 1 Amend Senate File 474 as amended, passed and
2 reprinted by the Senate as follows:
3 1. Page 1, line 9, by striking the word "actual"
4 and inserting in lieu thereof the word "legal".

H-3800 FILED APRIL 23, 1981 BY POFFENBERGER of Dallas

Let 4/27/81 (p. 1450)

SENATE FILE 474

H-3830

1 Amend Senate File 474, as amended, passed and
2 reprinted by the Senate, as follows:
3 1. By striking everything after the enacting
4 clause and inserting in lieu thereof the following:
5 "Section 1. Section 613A.4, Code 1981, is
6 amended by adding the following new subsections:
7 NEW SUBSECTION. 5. Any claim for punitive
8 damages.
9 NEW SUBSECTION. 6. Any claim for damages caused
10 by a municipality's failure to discover a latent defect
11 in the course of an inspection.
12 NEW SUBSECTION. 7. Any claim based upon an act
13 of the municipality or an officer or employee of the
14 municipality in accordance with a generally accepted
15 standard of design at the time of the act."

H-3830 FILED APRIL 27, 1981 BY SHIMANEK of Jones
Lost 4/27/81 (p. 1448) POFFENBERGER of Dallas

SENATE FILE 474

H-3839

1 Amend Senate File 474 as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 1, by striking 5 through 9 and inserting
4 in lieu thereof the following: "any claim which is
5 exempted under section 613A.4."
6 2. Page 2, by striking lines 27 through 35.
7 3. Page 3, by striking line 1.

H-3839 FILED APRIL 27, 1981 BY RAPP of Black Hawk
Lost 4/27/81 (p. 1452) CONNORS of Polk

SENATE AMENDMENT TO HOUSE AMENDMENT TO
SENATE FILE 474

H-5015

1 Amend the House amendment, S-3904, to Senate File
2 474 as amended, passed and reprinted by the Senate
3 as follows:
4 1. Page 1, by striking lines 8 through 14.

H-5015 FILED JANUARY 25, 1982 RECEIVED FROM THE SENATE
House concurred 2/16 (p. 450)

MAY 23, 1981

HOUSE AMENDMENT TO SENATE FILE 474

S-3904

Amend Senate File 474 as amended, passed, and reprinted by the Senate as follows:

1. Page 1, line 6, by inserting after the word "damages" the words ", and actions permitted under section 85.20".

2. Page 1, line 9, by inserting after the word "malice" the words "or recklessness".

500: 3. Page 2, by striking lines 9, 10, and 11 and inserting in lieu thereof the following:

"NEW SUBSECTION. 6. Any claim for damages caused by the municipality's failure to make an inspection or by reason of making an inadequate or negligent inspection of any property not owned by the municipality."

4. Page 2, by striking lines 12 through 15.

5. Page 2, by striking lines 28 through 30, and inserting in lieu thereof the following: "apply to awards for punitive damages. The duty to save".

6. Page 3, by inserting after line 11 the following:

"In the event the officer or employee fails to cooperate in the defense against the claim or demand, the municipality shall have a right of indemnification against that officer or employee."

S-3904 FILED
MAY 22, 1981

RECEIVED FROM THE HOUSE

Senate amended per 5001 & concurred 1-20-82 (p. 126)

SENATE FILE 474

S-5001

Amend the House Amendment, S-3904, to Senate File 474 as amended, passed, and reprinted by the Senate as follows:

1. Page 1 by striking lines 8 through 14.

S-5001 FILED

JANUARY 14, 1982

Adopted 1/20/82 (p. 125)

BY EDGAR H. HOLDEN

SENATE FILE 474

S-5004

Amend the House Amendment, S-3904, to Senate File 474 as amended, passed, and reprinted by the Senate as follows:

1. Page 1, by striking lines 6 and 7.

S-5004 FILED

JANUARY 20, 1982

WITHDRAWN *(p. 126)*

BY RAY TAYLOR

Sec. 2. Chapter 613A, Code 1981, is amended by adding the following new section:

NEW SECTION. DEFAULT JUDGMENTS. A default judgment shall not be taken against an employee, officer, or agent of a municipality unless the municipality is a party to the action and the time for special appearance, motion or answer by the municipality under rule 53 of the rules of civil procedure has expired.

Sec. 3. Section 613A.2, unnumbered paragraphs 1 and 2, Code 1981, are amended to read as follows:

Except as otherwise provided in this chapter, every municipality is subject to liability for its torts and those of its officers, and employees, ~~and agents~~ acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function.

~~A tort shall be deemed to be within the scope of employment or duties if the act or omission reasonably relates to the business or affairs of the municipality and the officer, employee, or agent acted in good faith and in a manner a reasonable person would have believed to be in and not opposed to the best interests of the municipality.~~

Sec. 4. Section 613A.4, subsection 3, Code 1981, is amended to read as follows:

3. Any claim based upon an act or omission of an officer or employee of the municipality, exercising due care, in the execution of a statute, ordinance, ~~or officially adopted resolution, rule,~~ or regulation of a governing body whether the statute, ordinance or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the municipality or an officer or employee of the municipality.

Sec. 5. Section 613A.4, Code 1981, is amended by adding the following new subsections:

SENATE FILE 474

AN ACT

RELATING TO THE TORT LIABILITY OF GOVERNMENTAL SUBDIVISIONS.

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

Section 1. Chapter 613A, Code 1981, is amended by adding the following new section:

NEW SECTION. OFFICERS AND EMPLOYEES. All officers and employees of municipalities are not personally liable for any claim which is exempted under section 613A.4, except a claim for punitive damages, and actions permitted under section 85.20. An officer or employee of a municipality is not liable for punitive damages as a result of acts in the performance of a law enforcement or emergency duty, unless actual malice or recklessness is proven.

NEW SUBSECTION. 5. Any claim for punitive damages.

NEW SUBSECTION. 6. Any claim for damages caused by a municipality's failure to discover a latent defect in the course of an inspection.

Sec. 6. Section 613A.8, Code 1981, is amended to read as follows:

613A.8 OFFICERS AND EMPLOYEES DEFENDED. The governing body shall defend any of its officers, and employees and agents, whether elected or appointed ~~and, except in cases of malfeasance in office, willful and unauthorized injury to persons or property, or willful or wanton neglect of duty,~~ shall save harmless and indemnify such officers, and employees and agents against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of their employment or duties. However, the duty to save harmless and indemnify shall not apply to awards for punitive damages. The duty to save harmless and indemnify shall not apply and the municipality shall be entitled to restitution by an officer or employee if, in an action commenced by the municipality against the officer or employee, it is determined that the conduct of the officer or employee upon which the tort claim or demand was based constituted a willful and wanton act or omission. Any independent or autonomous board or commission of a municipality having authority to disburse funds for a particular municipal function without approval of the governing body shall similarly defend, save harmless and indemnify its officers, and employees and agents against such tort claims or demands.

The duty duties to defend, and to save harmless, and indemnify shall apply whether or not the municipality is a party to the action and shall include but not be limited to cases arising under title 42 United States Code section 1983.

In the event the officer or employee fails to cooperate

in the defense against the claim or demand, the municipality shall have a right of indemnification against that officer or employee.

TERRY E. BRANSTAD
President of the Senate

DELWYN STROMER
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 474, Sixty-ninth General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved March 2, 1982

ROBERT D. RAY
Governor